



आरत का राजपत्र

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सं. 49] नई दिल्ली, नवम्बर 29—दिसम्बर 5, 2015, शनिवार/अग्रहायण 8—अग्रहायण 14, 1937

No. 49] NEW DELHI, NOVEMBER 29—DECEMBER 5, 2015, SATURDAY/AGRAHAYANA 8—AGRAHAYANA 14, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(हिंदी अनुभाग-2)

नई दिल्ली, 26 नवम्बर, 2015

का.आ. 2228.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के अधीन आयुक्त कार्यालय, केंद्रीय उत्पाद शुल्क, सीमा-शुल्क एवं सेवा कर, जबलपुर को, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[फा. सं. ई-11017/1/2015-ए.डी. (हिंदी-2)]

मीमांसक, संयुक्त निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(HINDI SECTION-2)

New Delhi, the 26th November, 2015

S.O. 2228.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the Office of Commissioner, Central Excise, Custom and Service Tax, Jabalpur under the Department of Revenue, where more than 80% staff have acquired working knowledge of Hindi.

[F. No. E-11017/1/2015-AD (Hindi-2)]

MIMANSAK, Jt. Director (OL)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 26 नवम्बर, 2015

का.आ. 2229.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1048 का 41)की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, अबु धाबी में अजय सिंह, सहायक, श्री रविंद्र कुमार, सहायक, श्री आशुतोष कुमार श्रीवास्तव, निम्न श्रेणी लिपिक, अशोक कुमार, निम्न श्रेणी लिपिक और श्री शंभु नाथ, निम्न श्रेणी लिपिक को दिनांक 26 नवम्बर, 2015 से, सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2015]

प्रकाश चन्द्र,उप सचिव (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 26th November, 2015

S.O. 2229.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1048), the Central Government hereby appoints (1) Shri Ajay Singh, Assistant (2) Shri Ravindra Kumar, Assistant (3) Shri Ashutosh Kumar Srivastava, LDC (4) Shri Ashok Kumar, LDC and (5) Shri Shambhu Nath, LDC as Assistant Consular Officer in Embassy of India, Abu Dhabi to perform Consular services with effect from 26 November, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 26 नवम्बर, 2015

का.आ. 2230.—राजनयिक और कोंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 (1048 का 41)की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के सहायक उच्चायोग, कँडी में श्री जीवन सिंह सिजवाली, सहायक को दिनांक 26 नवम्बर, 2015 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2015]

प्रकाश चन्द्र,उप सचिव (कोंसुलर)

New Delhi, the 26th November, 2015

S.O. 2230.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths

and Fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Jeewan Singh Sijwali, Assistant as Assistant Consular Officer in the Assistant High Commission of India, Kandy to perform Consular services with effect from 26 November, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 27 नवम्बर, 2015

का.आ. 2231.—राजनयिक और कोंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 (1048 का 41)की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के सहायक उच्चायोग, मोमबासा में श्री मदन मोहन, प्रवर श्रेणी लिपिक को दिनांक 27 नवम्बर, 2015 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2015]

प्रकाश चन्द्र,उप सचिव (कोंसुलर)

New Delhi, the 27th November, 2015

S.O. 2231.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Madan Mohan, UDC as Assistant Consular Officer in the Assistant High Commission of India, Mombasa to perform Consular with effect from 27 November, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 3 दिसम्बर, 2015

का.आ. 2232.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उप-नियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स थैराप्यूटिक्स केमिकल रिसर्च कारपोरेशन, म.नं. 25-12-39, द्वितीय तल, गोदावरी स्ट्रीट, एसबीआई टाउन शाखा के सामने, विशाखापत्तनम्-530001, को इस अधिसूचना, के राजपत्र में प्रकाशन की तरीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 की अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और

अयस्क, (ग्रुप-I), अर्थात्, लौह अयस्क और मैंगनीज और अयस्क, मैंगनीय डाइऑक्साइड को छोड़कर, को निम्नलिखित शर्तों के अध्यधीन उक्त खनिजों और अयस्कों के निर्यात से पूर्व विशाखापत्तनम् और गंगावरम, में निरीक्षण करने के लिए एक अधिकरण के रूप में मान्यता प्रदान करती है, अर्थात्

- (i) मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कारपोरेशन, म.नं. 25-12-39, द्वितीय तल, गोदावरी स्ट्रीट, एसबीआई टाउन शाखा के सामने, विशाखापत्तनम्-530001, खनिज और अयस्क, (ग्रुप-I) (निरीक्षण) का निर्यात नियम, 1965 के नियम 4 के अधीन निरीक्षण के क्रियान्वयन के लिए उनके द्वारा अनुसरित पद्धति की परीक्षा करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगा; और
- (ii) मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कारपोरेशन, म.नं. 25-12-39, द्वितीय तल, गोदावरी स्ट्रीट, एसबीआई टाउन शाखा के सामने, विशाखापत्तनम्-530001, इस अधिसूचना के अधीन अपने कृत्यों के अनुपालन में ऐसे निर्देशों द्वारा आबद्ध होंगे, जो निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर लिखित में दिए जाएं।

[फा. सं. 04/4/2015-निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 3rd December, 2015

S.O. 2232.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Therapeutics Chemical Research Corporation, Door No. 25-12-39, 2nd Floor, Godevari Street, Opp SBI Town Branch, Vishakhapatnam-530001, as an agency for a period of three years from the date of publication of this notification, for inspection of Minerals and Ores (Group-I), namely, Iron Ore and Manganese Ore excluding manganese dioxide specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce vide number S.O. 3975, dated the 20th December 1965, prior to export of the said Minerals and Ores at Vishakhapatnam and Gangavaram subject to the following conditions, namely:—

- (i) that M/s Therapeutics Chemical Research Corporation, Door No. 25-12-39, 2nd Floor, Godevari Street, Opp SBI Town Branch, Vishakhapatnam-530001, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the

method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and;

- (ii) that M/s Therapeutics Chemical Research Corporation, Door No. 25-12-39, 2nd Floor, Godevari Street, Opp SBI Town Branch, Vishakhapatnam-530001, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F. No. 04/4/2015- Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 अक्टूबर, 2015

का.आ. 2233.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अग्रवाल पैकर्स एण्ड मुवर्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 31/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2015 को प्राप्त हुआ था।

[सं. एल-11025/2/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th October, 2015

S.O. 2233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Aggarwal Packers and Movers Ltd. and their workman, which was received by the Central Government on 23-10-2015.

[No. L-11025/2/2015-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVATAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 31/2015

Shri Rajesh Kumar Yadav,
S/o NandjiYadav,
R/o S-105, Arjun Camp,
Mahipalpur,
New Delhi 110 037

...Workman

Versus

M/s. Aggarwal Packers and Movers Ltd.
Through its Managing Director
Mr. Anu Walia,
R/o Aggarwal Movers Group,
Gate No. 2, Terminal 2 (Cargo),
IGI Airport,
New Delhi 110 037

...Management

AWARD

Shri Rajesh Kumar Yadav was engaged by M/s. Aggarwal Packers and Movers Ltd. as loader at Terminal No.2 , where he served from 17.11.2010 till December 2013. His services were dispensed with by the management on 31.12.2013. He served a legal notice of demand for payment of back wages, PF, Bonus, compensation etc. His demand was not conceded to by the management. Constrained by these circumstances, he raised a dispute before the Conciliation Officer. Since his claim was contested by the management, conciliation proceedings ended into a failure. Since 45 days from the date of moving an application before the Conciliation Officer expired, ShriYadav opted to file his dispute before the Tribunal using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under Section 10(1)(d) of the Act.

2. Management was called upon to file their written statement. But despite, service of notice management failed to put in its appearance. Hence, management was proceeded ex-parte and the case was listed for consideration on maintainability of application.

3. On 07.10.2015, the claimant stated that he does not want to proceed with the adjudication of the case and wants withdraw the petition since this Tribunal is not the appropriate Government. Since the claimant did not want to pursue the petition before this Tribunal, as such statement of the claimant regarding withdrawal of the case was separately taken.

4. In view of the averments made by the claimant, the claimant is permitted to withdraw the present petition, with liberty to file petition in the court of competent jurisdiction as the employer of the claimant does not fall within the jurisdiction of this Tribunal and cannot exercise territorial jurisdiction over the petition. Hence, an award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : October 8, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2234.—केन्द्र सरकार, गोदी कामगार (सुरक्षा, स्वास्थ्य एवं कल्याण) अधिनियम, 1986 की धारा 3 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और श्रम एवं रोजगार मंत्रालय के दिनांक 10 अक्टूबर, 2012 के सं. का.आ. 2509(अ) की अधिसूचना का अधिक्रमण करते हुए, डॉ. अवनीश सिंह, महानिदेशक, कारखाना सलाह सेवा और श्रम संस्थान (डीजीफासली), मुम्बई को 15 सितम्बर, 2015 से एतद्वारा उक्त अधिनियम के प्रयोजनार्थ सभी बंदरगाहों के लिए गोदी सुरक्षा के मुख्य नियंत्रक के रूप में नियुक्त करते हैं।

[फा. सं. ए-32012/01/2015-आईएसएच-I]

राज कुमार, अवर सचिव

New Delhi, the 30th November, 2015

S.O. 2234.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Dock Workers (Safety, Health and Welfare) Act, 1986, and in supersession of the notification of the Ministry of Labour and Employment No. S.O. 2509(E), dated 10th October, 2012, the Central Government hereby appoints Dr. Avneesh Singh, Director General, Directorate General Factory Advice Service and Labour Institutes (DGFASLI), Mumbai to be the Chief Inspector of Dock Safety for all major ports for the purposes of the said Act with effect from 15th September, 2015 (F/N).

[F.No. A-32012/01/2015-ISH-I]

RAJ KUMAR, Under Secy.

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रत्नाकर बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलहापुर के पंचाट (संदर्भ संख्या 6/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2015 को प्राप्त हुआ था।

[सं. एल-12012/51/2009-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 30th November, 2015

S.O. 2235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2009) of the Industrial Tribunal-cum-Labour Court No. 2, Kolhapur as shown in the Annexure, in the Industrial Dispute between management of Ratnakar Bank Ltd. and their workmen, received by the Central Government on 30-11-2015.

[No. L-12012/51/2009-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

**IN THE INDUSTRIAL TRIBUNAL NO. 2,
MAHARASHTRAAT KOLHAPUR
REFERENCE (IT) NO. 6 OF 2009**

Between :

The Asstt. General Manager,
Ratnakar Bank Ltd.
Mahaveer, 179, 'E' Ward,
Shri Shahu Market Yard,
Kolhapur ...First Party

And

Coram : Shri D.V. Thakare, Industrial Tribunal

Appearances :

Mr. D. D. Dhanawade, Advocate for First Party

Mr. J. B. Deshmukh, Advocate for Second Party

PART-1 AWARD

(Delivered on 20th October 2015)

This is a reference made by the Government of India, Ministry of Labour, New Delhi vide its order No. L-12012/51/2009-IR (B-I) dt. 7/12/2009 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 and referred the said dispute for adjudication to this Tribunal in respect of demand specified in Schedule to the reference order.

2. According to second party workman he was working since 1981 as 'peon' in Hupari. He worked sincerely and honestly. He has clean past service record. No single memo was issued to him. He was dismissed vide dismissal order dt.27/7/2006 and second party approached the learned Labour Court vide Comp. (ULP) No.150/2006. For want of jurisdiction the complaint is dismissed on 24/04/2008. Thereafter the second party raised dispute and finally the dispute referred by Central Government for adjudication to this Tribunal. The second party was issued charge sheet alleging that he deliberately caused damage to the property of first party bank and customers of the bank and has done any act prejudicial to the interest of the bank. On this ground charge sheet issued to him on 17/12/2005. Prior to that he was suspended pending enquiry since 10/12/2005. The allegations were made that about 24 cheques were deposited by daily news paper 'Pudhari' in United Western Bank, Shivaji Chowk branch which were sent by courier to Hupari branch for clearance from current account No.312 with one more cheque.

3. The said amount was in the name of 'M/s Rajendra News Paper Agency'. Inadvertently those cheques are put in bank drawer for the period of 5 months. The said customer had sufficient bank balance in its account. The second party did not put these cheques intentionally and deliberately to commit any kind of fraud or to prejudice the interest of first party. The second party put these 25 cheques from 15/5/2005 to 31/10/2005 inadvertently and when on 9/12/2005 the first party employer asked about the cheques immediately he came to know that some cheques have not deposited by him for clearance he searched same and handed over these cheques immediately to first party on the same day and submitted written apology. No loss or damage caused to the property of first party and to the customers. Only inconvenience is caused.

4. The enquiry conducted against him after violation of principles of natural justice and with undue haste, he was not given proper opportunity to defend himself. The entire enquiry was conducted within a span of 5½ hours on 19/1/2006. The second party did not accept the charges before enquiry officer. No alleged charges proved against him. The enquiry officer acted as management representative other than independent enquiry officer. The bank submitted written argument on 31/1/2006 to the enquiry officer and second party submitted his written argument on 6/2/2006 and again apologized in writing. The first party did not consider his clean service record. Enquiry report was submitted on 6/3/2006. The findings are based on such enquiry which is conducted in utter violation of principles of natural justice and with undue haste. The report and findings are not based on evidence and findings are not proper. The enquiry report is perverse and bad in law.

5. On 16/03/2006 he submitted written say to the enquiry officer's report which was not considered and final show cause notice issued to second party on 22/3/2006. It was replied on 29/03/2006 and again second party tendered apology in writing but his prayer was not considered before issuing dismissal order which is shockingly disproportionate punishment. Thus this act is not in good faith but in colourable exercise of employer's rights. Without proving charges this punishment is imposed for patently false reasons and the dismissal is malafide. The second party workman is unemployed and was not gainfully employed anywhere. Therefore, second party has challenged this hasty and illegal action and prayed that charge sheet be quashed and set aside and the finding given by enquiry officer be held as perverse.

6. Vide reply Ex.C-5 first party denied all the allegations levelled against it. It is contended that the 'appropriate government' for first party bank is 'Central Government' and not the 'State Government'. Hence this reference is not maintainable. This Tribunal has no jurisdiction to try and entertain the present reference. Hence preliminary

issue be framed pertaining to maintainability of present reference. It is contended that the second party did not approach this Tribunal with clean hands. It is contended that Rajendra Shinde bearing Current A/c No.312 at Hupari branch gave 24 cheques worth Rs.2,99,500/bearing different dates from 15/05/2005 to 31/10/2005 to 'Daily Pudhari'. The cheques were deposited in United Western Bank and same forwarded for clearance to Hupari branch, in fact there was no balance in the said account.

7. It is contended that in order to protect the interest of brother of second party workman he used to collect courier mail from various couriers and retained in his possession 24 cheques with one more cheque of Rs. 6000/-unauthorisedly. He retained all these cheques and not debited in the account of his brother and did not send for clearance and on enquiry it was revealed that second party workman handed over 25 cheques to branch manager and tendered apology which shows that second party workman committed grave misconduct. Therefore he was suspended and enquiry was initiated by following due process of law.

8. In the enquiry all material documents were produced and three witnesses were examined. The second party admitted the misconduct and tendered apology. Even then enquiry officer recorded evidence and asked the second party to conduct cross-examination of these witnesses but he declined and enquiry officer submitted his finding on 6/3/2006 which has been served on second party on 13/3/2006, final show cause notice issued to him on 22/3/2006. The second party was terminated vide order dt. 27/07/2006. Thus the termination is proper and legal. Ultimately, it is contended that if this Tribunal comes to the conclusion that termination is illegal and unjustified then the first party may kindly be granted opportunity to adduce evidence.

9. After complying all the requirements of law and natural justice the services of second party have been terminated. It is contended that if the Tribunal comes to the conclusion that findings of enquiry officer are perverse or enquiry is vitiated on any count, the first party may be allowed to lead evidence before this forum. The termination is legal and proper. The misconduct committed by second party is serious. There is no unfair labour practice on the part of first party. The findings are legal and proper. Complete opportunity was given to second party to defend himself in the enquiry. The findings are based on documents and evidence on record. The second party admitted the charges and allegations levelled against him voluntarily and without any pressure. Taking into consideration the length of his service, his past service record and gravity of misconduct the first party found that termination is the only appropriate and proper punishment and terminated his services. This action is in good faith and is not in the colourable exercise of employer's rights or with undue haste. There is no victimisation. Lastly,

it is contended that reference is misconceived, false, frivolous, therefore be dismissed with costs.

10. My learned Predecessor Mr.K.R. Pethkar vide Ex.O6 framed issues on 12/06/2012. The first party had filed application on 9/02/2010 and challenged jurisdiction of this court on the ground that first party bank is governed by Central Act as its activities are spread in the many States. Therefore, the dispute raised and conciliated before commissioner of Labour (Central). Therefore, this Tribunal constituted by State Government has no jurisdiction and inadvertently the dispute is referred to this Tribunal instead of Central Government's Central Tribunal. Thus this Tribunal has no jurisdiction and the reference be sent back for proper adjudication. The learned Predecessor passed order on 30/04/2014 held that issue of jurisdiction and preliminary issues in respect of enquiry can be decided together and disposed of the application. As per this order following issue nos.1 and 2 and issue of jurisdiction needs to be decided together.

Issues	Findings
(i) Whether it is proved that the departmental enquiry was conducted as per the principles of natural justice ?	In the affirmative
(ii) Whether the findings of the departmental enquiry are just and proper ?	In the affirmative
(iii) Whether this court has jurisdiction to entertain the reference ?	In the affirmative

Reasons

11. **Issue nos.1 to 3 :** In support of the claim and on the point of fairness of enquiry and perversity of finding the second party examined himself at Ex.U6. The second party workman is not crossexamined by the first party. The second party workman deposed on oath and reiterated all the facts mentioned in the statement of claim. He was working as peon since 1981 with first party at Hupari branch. According to him, false charge sheet is issued and enquiry is conducted against him in violation of principles of natural justice and with undue haste. According to him, he inadvertently kept 24 cheques in the drawer of first party bank which were lying there from last 5 months. He had no intentional motive to commit any kind of fraud or prejudice to the interest of first party and when first party asked him immediately he took out all the cheques and handed over the first party and apologized the mistake orally and in writing. He has not caused any loss or damage to the property of first party bank and its customers.

12. He was not given proper opportunity to defend himself in the enquiry. He was pressurised to accept the

false charges. He was assured that it is a mere formality and he will not be terminated by accepting the charges. The entire enquiry was conducted within 5½ hours on 19/01/2006 with undue haste. The enquiry officer did not act impartially and he failed to follow the principles of natural justice. The findings given by him are in utter violation of principles of natural justice and not based on the evidence brought on record in the enquiry. The enquiry officer did not consider apology tendered by him in the enquiry and he was having clean and unblemished past service record.

13. The learned advocate Mr.J.B. Deshmukh for second party workman vehemently argued that the second party peon worked since 1981 and was terminated in 2006. He completed 25 years service continuously and unblemishedly. The panchanama dt. 9/12/2005 does not favour the case of first party. No opportunity was given to cross-examine the witness of management. Thus there is breach of natural justice. Moreover finding of enquiry officer are perverse. The enquiry officer did not consider the defence that the delinquent did not keep concerned cheques in his custody but they were misplaced in the office of bank.

14. According to him, the analogy that somebody goes to bank to remit the money at about 5.30 pm is not acceptable. There is no complaint that second party has caused loss. His image is not maliced. According to him, as per Sec.10(2) of I.D. Act the reference is made by Central Government, hence issue of jurisdiction becomes redundant and needs no jurisdiction. He argued that second party was not crossexamined by first party. Therefore the evidence of second party workman was unchallenged. According to him, in view of the evidence and material on record in the enquiry it is clear that no reasonable opportunity was given to second party workman to defend himself in the enquiry and the findings are not based on evidence led in the enquiry, therefore findings are perverse. He is placing reliance on,

Roop Singh Negi v/s Punjab National Bank and Ors.
(2009 I CLR 160-Hon'ble Supreme Court).

Ratio : Purported confession of appellant not proved in the enquiry—No direct or indirect evidence against appellant in support of charges made against him. Report of Disciplinary Authority and Order of Appellant Authority not supported by any reasons—Provisions of Evidence Act, not applicable, but principles of natural justice are applicable to such enquiries—inferences of enquiry officer are not supported by any evidence. Suspicion against delinquent cannot be a substitute for legal proof—Judgment of High Court set aside.

15. On the contrary, learned advocate Mr.D.D. Dhanawade for first party bank conceded that reference is

already sent by Central Government to this Tribunal for adjudication, therefore he did not agitate the issue of jurisdiction at this moment. So far as the fairness of enquiry and perversity of findings are concerned he argued that sufficient opportunity was given to the second party workman in the enquiry. Panchanama dt. 9/12/2005 supported the case of management. The second party was suspended on 10/12/2005. Therefore, he was not concerned with bank. He has admitted his guilt in the enquiry. He was given complete opportunity to defend himself in the enquiry. As per the record of enquiry he did not request to give opportunity to defend himself. On the point of perversity he argued that second party workman did not give his statement in the enquiry and after considering the material on record the enquiry officer judiciously gave the finding. There is no perversity in the finding.

16. In view of bipartite submissions, I appraised the material subtly. Though the maintainability of the reference is challenged on the ground of ‘appropriate government’ is Central Government and therefore the reference is not maintainable, but as per Ex.O1 the order issued by Desk Officer, Ministry of Labour, Government of India, New Delhi dt.7/12/2009 as per clause (d) of sub-section (1) and sub-section (2A) of Sec.10 of I.D. Act the Central Government referred this dispute for adjudication to Industrial Tribunal, Kolhapur, and asked the said Tribunal to give its award within a period of 3 months. Thus this order makes it crystal clear that this court has jurisdiction to try and entertain the reference. Moreover in view of this order the learned advocate Mr.Dhanawade for first party conceded that he is not pursuing and harping on the issue of maintainability of reference on the ground that appropriate government is Central Government.

17. Here the second party workman has challenged the fairness of enquiry and perversity of finding of enquiry officer. In consonance of this objection I have gone through the enquiry papers. The second party workman has been issued charge sheet dt.17/12/2005 for the misconduct pertaining to 24 cheques worth Rs.2,99,500/- issued by one Rajendra Shinde to local news paper Pudhari and one cheque worth Rs. 6000/- deliberately and intentionally and thus alleged that he committed misappropriation and bank lost confidence in him. One Rajan M. Patil was appointed as enquiry officer. The enquiry conducted on 21/1/2006 at 12 pm. The enquiry officer, delinquent and his bank representative Vasant Dharmashetti were present. The second party workman had been read over charge sheet. The delinquent disclosed that he received the copy of charge sheet understood the charge of misconduct. He further conceded that unconditionally he accepted charge of misconduct and gave admission in his own handwriting Ex.3. By following principles of natural justice the enquiry officer asked him whether he wants to defend himself in the enquiry that

time the delinquent voluntarily stated that he admits his guilt and refused to get defended through representative.

18. The management representative produced relevant documents at Ex.M 2 to M13, consisted of letter dt. 9/12/2005 and list of cheques, xerox copies of cheques and covering memo dt.6/6/2015, covering letter alongwith 4 xerox copies of cheques dt.9/7/2005 and covering memo dt. 4/8/2005 with xerox copies of 4 cheques, covering memo dt. 8/9/2005 with xerox copies of 4 cheques, covering memo dt.1/10/2005 with 4 xerox copies of cheques, covering memo dt. 9/11/2005 with 4 xerox copies of cheques, panchnama dt. 9/12/2005 with list of cheques, letter issued by United Western Bank dt.16/12/2005 to head office, the memo written by Hupari branch with bounced 25 cheques and statement of account no. CA 312, letter issued by second party workman dt.25/12/2005 and list of witnesses.

19. The management examined its employee Satish Chougule who stated in his deposition the endorsement put on Ex.M11 bears signature of second party. He further deposed that when query was made about missing 25 cheques received for clearing that time it was disclosed that the second party admitted that he is having said cheques then he received these cheques from second party workman and prepared panchnama, obtained explanation from second party workman on 9/12/2005 and transmitted the matter with letter to Asstt. General Manager (Inspection, Audit and Vigilance) M2, 3, 10 for further action.

20. According to him, these cheques received from United Western Bank with covering letter M4, 5, 6, 7, 8, 9 and the cheques mentioned in panchnama are the same. He further stated that Rajendra Shinde the brother of second party workman is having account with first party bank and as per the explanation dt.9/12/2005 the second party employee kept cheques with him which relate to his brother Rajendra Shinde. According to him, the second party workman retained these cheques unauthorisedly with him. The enquiry officer asked the second party workman to conduct cross-examination of this witness but he declined to conduct the cross-examination of this witness.

21. The management examined one witness Rajendra Kamble on the same day who stated that on 9/12/2005 panchnama was conducted in his presence when he came to bank to remit the cash. He admitted the contents of panchnama. The cross-examination of this witness was also not conducted by the second party workman. The management examined one more witness the clerk Ramesh Desai who was working in Hupari branch from 18/05/2005. He is stated that panchnama dt.9/12/2005 was done in the bank in his presence. Again the second party declined to conduct the cross-examination of this witness. Thereafter enquiry officer asked the second party whether he wants to examine any witness or produce documents in his favour in the enquiry but he declined to

lead evidence and produce documents. On the contrary, he gave admission in writing Ex.3 that he has admitted the charges unconditionally without getting pressurised.

22. From the perusal of report of enquiry officer it is clear that he has gone through the entire enquiry papers. The evidence and documents produced by the management he held that management has led sufficient evidence coupled with relevant documents and proved that second party workman retained total 25 cheques worth Rs.3,05,500/- unauthorisedly with him for the period of 6 months. As a result, the first party bank could not give proper service and information to its customers and some customers were deprived of using their amount deposited in the bank and due to this misconduct of the second party workman the image of first party is lowered down and finally held that charges kept on delinquent on 17/12/2005 are proved. Both charges i.e. deliberately and intentionally caused loss to the property of first party bank and its customers, committed misconduct affecting the interest of first party bank are proved. As per Ex.3 the second party workman has given written apology and admitted the misconduct unconditionally when enquiry was initiated against him. Again vide letter Ex.6 dt. 6/2/2006 the second party admitted his guilt and represented for the same.

23. Thus it is clear that despite the clear admissions of misconduct given on two occasions i.e. on 19/1/2006 and 6/2/2005 by way of abandoned precaution the first party company conducted disciplinary enquiry against the second party workman, in which the management examined three witnesses but the second party workman declined to conduct their cross-examination and did not lead evidence and produce documents in support of his defence. Here the evidence led by second party workman is not sufficient to hold that no opportunity was given to the second party workman in the disciplinary enquiry and there is violation of principles of natural justice. The real facts are not disclosed in the affidavit of second party workman.

24. The intention is in the evidence of second party is to show that he was not given opportunity to defend himself in the enquiry whereby enquiry was conducted in single day it does not mean that there was hastiness on the part of first party in view of written admission Ex.3 given by second party workman during the enquiry conducted on 19/01/2006. Here the enquiry officer has accepted the evidence of management which was in no way contradicted by second party workman without being supported either by documentary and oral evidence in the form of defence witness.

25. Further on the basis of evidence the enquiry officer held that management proved the charges levelled in the charge sheet against the second party workman. After perusal of the evidence in the enquiry I did not find any

lacuna on the part of enquiry officer. He has also properly appreciated the seizure panchanama dt.9/12/2005. The assessment of evidence made by him cannot be said to be poor and irrelevant. In fact the second party could not show that how the enquiry officer came to wrong and faulty conclusion. Thus on the backdrop of instances of the above said acts, evidence brought in the enquiry the finding recorded by enquiry officer into the charges are definitely not perverse. It is not a cryptic record without stating any reasons, the enquiry officer has not travelled beyond the limitation of charges levelled. He has drawn his conclusions within the framework of charges and all the facts adduced by the evidence of management. Thus there is nothing on record to show that the findings are based on extraneous discussion. The argument canvassed by learned advocate Mr.Deshmukh for the second party workman are not well grounded and cannot be accepted. On the contrary, the argument canvassed by learned advocate Mr. D.D. Dhanawade for first party company is upright and acceptable. Hence I hold that second party workman failed to establish that the enquiry is unfair and findings of enquiry officer are perverse and biased. It is also established that the enquiry officer gave complete opportunity to second party workman to defend himself in the enquiry and conducted the enquiry in accordance with the provisions of law and followed the principles of natural justice and findings are just and proper. Further this Tribunal has jurisdiction to try and entertain the present reference. Lastly I answer issue nos.1 to 3 in the affirmative and proceed to pass the following award.

Award

- (i) This Tribunal has jurisdiction to try and entertain the present reference.
- (ii) The enquiry conducted by the first party is as per the principles of natural justice.
- (iii) The findings of enquiry officer are just and proper.
- (iv) The office is hereby directed five copies of this Part 1 Award be sent to the Desk Officer, Ministry of Labour, Government of India, New Delhi for publication and necessary action.
- (v) Reference to proceed further as per procedure.

Kolhapur

Date : 20th October 2015

D. V. THAKARE, Industrial Tribunal, Kolhapur

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2236.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन एफ रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, गुवाहाटी के पंचाट (संदर्भ संख्या 03/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2015 को प्राप्त हुआ था।

[सं. एल-41011/02/2014-आईआर (बी-I)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 30th November, 2015

S.O. 2236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between management of N.F. Railway and their workmen, received by the Central Government on 30-11-2015.

[No. L-41011/02/2014-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present:

Shri L.C.Dey, M.A., LL.B., Presiding Officer,
CGIT-cum-Labour Court, Guwahati

Ref. Case No.03 of 2014

In the matter of an Industrial Dispute between :-

The Management of N.F.Railway, Maligaon,
Guwahati, Assam

-Vrs-

The workman represented by the
General Secretary, Rail Mazdoor Union, N.F. Railway,
Maligaon, Guwahati, Assam

APPEARANCES:

For the Union : Mr. M. K. Das, the General
Secretary, R.M.U.

For the Management : Mr. A. K. Nath, learned
Advocate.

Date of Award : 30.09.2015

AWARD

1. This Reference has been initiated on an Industrial Dispute raised by the General Secretary, Rail Mazdoor Union, N.F.Railway, Maligaon, Assam against the Management of N.F.Railway, Maligaon, Guwahati, Assam for termination of their workman Sri Deepak Sharma, Substitute E/Peon, which was referred by the Ministry of Labour for adjudication vide their Order No.L-41011/02/2014-IR(B-I) dated 25.02.2014 .The Schedule of this reference is as under :

SCHEDULE

“Whether 18.7.2001 termination of Shri Deepak Sharma, Substitute E/Peon, who has been represented by the General Secretary, Railway Mazdoor Union, 239/A, East Maligaon, Guwahati-11 from service by the employer-Appointing Authority of N.F.Railway, Maligaon, Guwahati is legal & justified? If not, then applicant-workman is entitled to get any compensation?”

2. On receipt of the order from the Ministry of Labour, Government of India, New Delhi, this reference case was registered and notices were issued by Registered Post to the parties concerned directing them to appear in the Court on the date fixed and to file their written statement along with the relevant documents in support of their claim. Accordingly both the parties appeared and submitted their respective claim statement/written statement.

3. The case of the Union, in nutshell, is that the workman Sri Dipak Sharma was appointed as Substitute Emergency Peon (SE Peon) in the scale of pay of Rs.2550-3200/- against the existing vacancy of work charged post sanctioned against estimate No.8/CE of 88-89 for 19 months P.B. No.77 of 2000-01, and he was posted in the Chief Engineer, N.F. Railway's office vide their letter No. E/283/45/E dated 08.08.2000 issued by the APO, Engineering for and on behalf of the General Manager (Personnel), Maligaon (in short GM(P)/MLG). Accordingly the workman joined his duty as SE Peon and he was attached to Shri Ravi Amrohi, CE/TP, Maligaon, N.F.Railway. The post against which the workman was appointed was in the Emergency Peon Unit under administrative control of the Chief Engineer, N.F.Railway, Maligaon, and the seniority of the workman unit is looked after by the Office of the Chief Personnel Officer, Maligaon, N.F.R (CPO,MLG, N.F.Railway in short). Thereafter the said post was to be maintained in the sanctioned strength of the relevant Emergency Peon Unit of the establishment of Chief Engineer, Maligaon Railway Headquarter against the permanent incumbent's absence or otherwise as per the permissible percentage of the book of sanction for substitutes against which substitutes can be engaged. As per the then prevailing mode of engagement of SE Peon's initial appointment was made for 3 months only but extended for further period depending on the satisfaction of the officer in whose control and/or for whom in his official capacity the services of the SE Peons are meant for till he attains a Temporary servant's status after 120 days continuous satisfactory service; and the said officer in whose control and /or for whom in his official capacity the service of the SE peons are meant for, has to certify the satisfactory service of the SE Peon serving under him at the end of 90 days service by the SE Peon and thereafter the service of the SE Peon is extended further. In adherence to the system the service of the workman was extended on completion of his continuous

service for 120 days upon issue of certificate of satisfactory service of the officer concerned, and in this way he rendered service for a period of 252 days upon to 16.04.2001 and thereafter the spouse of the officer concerned refused the workman to perform duties in the bungalow of the said officer i.e. Dy. CE/TP to which the family of the officer concerned shifted from transit camp where the officer concerned namely Shri Ravi Amrohi had been staying when the workman was engaged as SE Peon. The termination order was followed vide order No. E/283/45(E) dated 06.09.2001 issued by someone without intelligible name and designation without following the due procedure and the relevant railway Rules framed there under. The said termination order was issued with fourteen days pay in lieu of 14 days notice.

Further contention of the Union is that retention of the workman in his Post after continuous service of 120 days he shall be entitled to all the rights and privileges admissible to a temporary Railway servant, the in-action of the management in declaring him either unfit for temporary status on completion of 120 days of continuous service and with the temporary status of Railway employee with effect from 05.12.2000 as per Rule, and hence the Management can not lawfully decline to accord sanctity under law to this happening since the workman completed 252 days service. It is also mentioned that the management acted in a way which was designed to deprive the workman from easy and routine engagement as SE Peon with another officer even though he sought for such an engagement, and more and more officers were allowed SE Peon to be attached to them after the termination of the workman's service which is contradictory to the rules as enshrined in Para-E of Circular No. E/205/O/RP-EMERGENCY PEON/ PC/CON dated 15.02.1999. The Substitutes are defined and their service conditions are provided in Rule 1512 to 1516 of the Indian Railway Establishment Manual 1985 (revised Edition) and in the Master Circular on the appointment of Substitutes No.20 issued by the Railway Board, Ministry of Railway. According to Railway Establishment Rule the Substitute who has completed 4 months continuous service shall be entitled all the rights and privileges admissible to the Temporary Railway employee as per RB No. E(NG)/11/77/SB 37 of 24.10.1976. It is also provided in the Railway letter No. 83-E/1/pt WE iv dated 31.12.1997 that Peons are engaged as substitutes and as such, they are entitled to temporary status on completion of 120 days of continuous service and with the temporary status they are to be provided with all the facilities as are applicable to other temporary status holders. As such, the action of the management amounts to violation of the legal and fundamental rights of the workman and the law framed there-under. It is also pleaded that the workman was also not paid the retrenchment compensation as well as the notice pay by the Management which is a clear violation of the provision of Industrial Dispute Act, 1947.

Subsequently the workman gathering about the unpaid Bill came over and received the amount of the BR at Rs.3035/- It is added by the Union that the workman on completion of 120 days continuous service after attaining temporary status is entitled to be governed by the Rules applicable to the Temporary Railway Servant and to the protection of Article 311 of the Constitution of India and Railway Rules as well as the protection of Railway Servants' (Discipline and Appeal) Rules, 1968. Further case of the workman is that he was never given any opportunity to offer his representation against any fault in his services as found or nurtured by his employer before or after the order of his discharge. The management also violated their Circular No.E/205/O/RP-EMERGENCY PEON/PC/CON dated 15.02.1999 wherein it was provided that a terminated SE Peon has a locus to seek his fresh appointment in the same seniority list, when the workman applied for reengagement/reinstatement . While the workman ran from pillar to post for getting justice and applied for justice to the General Manager, N.F.Railway through his appeal dated 15.05.07 but it was of no avail. Thereafter he approached the Rail Mazdoor Union (RMU) which raised this Industrial Dispute. On failure of conciliation proceeding in presence of the RLC (C), Guwahati the dispute was referred by the Ministry for adjudication. It is also mentioned that the Union has collected certain information in connection with this reference under RTI Act, such as, the letter No. NFR/RTICell/2011/1842 dated 31.10.11, NFR/RTICell/2011/1842 dated 02.01.2012, No.PNO/AD/RTI/DS/1842 dated 27.12.2011 from FA & CAO/F&B cum PIO along with letter No.B/34724/RTI/Bill dated 23.12.2011 by APO/Bill , N.F.Railway. Hence, the Union prayed for granting reinstatement with salary, retrenchment compensation, productivity link bonus in the Railway to the workman in addition to an amount of Rs.5,00,000/- being the compensation to the workman, along with other consequential/incidental benefit according to law.

4. The Management contested the proceeding filing written statement stating inter-alia that the reference is not maintainable, and it is barred by limitation on the ground that the workman Deepak Sarmah was discharged from service on 16.4.2001 and the dispute has been raised after a considerable delay of about 13 years without showing sufficient cause or exceptional circumstances in order to justify the entertainment of the reference. It is mentioned that the file dealing with the matter regarding appointment and termination of the workman is not traceable and the same could not be traced out even after extensive search drive, as such, it is not possible to make comment on each point mentioned in the claim statements; and it would be prejudice against the Railway Administration if the case is admitted since the records are not available at this distant date. As such, written statement prepared by the Management based on the documents annexed by the workman along with his claim statement. The management

pledged that from the documents submitted by the workman it appears that the workman was engaged as SE Peon on 8.8.2000 against the vacancy of work charged post that was sanctioned for 19 months only, and the payment was subject to further conditions specifying the circumstances leading his discharge from service with effect from 16.4.2001 vide GM (P)/MLG's letter No. E/283/45(E) dated 06.09.2001 with 14 days pay in lieu of notice and hence, the admissible payment as per conditions of his appointment were drawn as referred to in the termination order No.C003270401 dated 25.04.2001 and CO7 No.5/508 dated 26.04.2001. The order No. E/283/45(E) dated 06.09.01 shows that the workman has less than 240 days of service and was given 14 days pay in lieu of notice and that had he been in service for more than 240 days he would have been given one month pay in lieu of notice plus retrenchment compensation @ 15 days pay for completing 240 days of service. Further the applicant himself in his document marked as Annexure-4 i.e. the petition dated 15.5.07 stated that he failed to attend duty for sometime and accordingly his service was terminated vide order dated 6.9.01. The management added that the workman after his discharge from service on 16.4.01 did not prefer any appeal against his discharge which is evident from the fact that no documents in support has been produced along with the application by the Applicant at the time of raising Industrial Dispute before the ALC (C), however, the petitioner submitted the copy of his appeal dated 15.5.07 as Annexure-A4 as aforesaid and since the authenticity of the said document is not accepted and hence, the management denied the same.

Further case of the management is that since the relevant case file to verify the claims of Sri Dipak Sarma is not traceable at such a distant date and no appeal/representation has been preferred by the applicant for a very long period and no sufficient cause or exceptional circumstances has been brought out by him in his application which justified the entertainment of such petition after so much delay as such, the present reference may not be given cognizance and hence, be dropped. The management mentioned that save and except what is specifically admitted by them, raised are deemed to have denied by the management; and that the case is false, frivolous and it is nothing but gross nuisance of law and as such it is liable to be dismissed with no award.

5. In order to establish their case the Union examined two witnesses including the workman Dipak Sarma and M. K.Das, General Secretary, RMU, while the management examined none although they cross-examined the workman witnesses.

I have heard arguments from both the parties at length. The Union submitted their written argument also. Perused the entire case record along with the evidence available on record.

Let me discuss the evidence of the workman witnesses. According to the Dipak Sarmah (WW.1), he was engaged as SE Peon in scale of Rs.2550-3200/- and was posted in Chief Engineer , N.F.Railway's office on 8.8.2000 (vide Exhibit-1) against the existing vacancy of work charged post sanctioned against Memo No. 8/CE of 88-89 for 19 months P.B. No.77 of 2000-01. Accordingly he joined his duty on 08.08.2000 and completed 120 days of continuous service and obtained the temporary status of a Railway Servant for further continuation of his service. He mentioned that the Officer in whose control or for whom in his official capacity the services of the workman are meant for has to certify the satisfactory service of the Sub E/Peon serving under him at the end of 90 days of service only whereafter his service was extended further. As such, the workman has completed 90 days of his service counting from his joining from 08.08.2000 and then he was retained till he completed 120 days service on 05.12.2000 and in this way he was allowed to remain in service beyond the terms and conditions of his engagement for a period of 252 days upto 16.04.2001 on which date he was refused to work in the bungalow of the officer concerned. He also added that the termination order was issued by the management vide letter No.E/283/45(E) dated 6.9.2001 vide Exhibit-2 which was signed by some one without intelligible name and designation without following the due procedure as established by law. The W.W.1 also mentioned that his discharge was by way of termination for his continuous service with fourteen days pay in lieu of fourteen days' notice and the service for 120 days i.e. after attaining the temporary status of the Railway Employees with effect from 05.12.2000 as per rules and as such, even his service was assumed to be not satisfactory, the inaction of the management in declaring him either unfit for temporary status or allowing on completion of 120 days the service the workman was deemed to have attained the temporary status as per Rules. Thus the management can not lawfully decline to accord sanctity under law to this happening after he completed 252 days service. It is also pleaded by the workman that the Management have acted in a way which was designed to deprive the workman from easy and routine engagement as SE Peon with another officer even though he sought such an engagement and more and more officers were allowed SE Peon attached to them after termination of service of the workman; and such an action of the management is contradictory to Rules as enshrined in Para-E of Circular No. E/205/O/RP-EMERGENCY EPON/PC/CON Dated 15.02.1999 (Exhibit-5) issued by the CPO, N.F. Railway. The workman further stated that the management has deprived him from getting of his dues such as, leave salary, bonus and retrenchment compensation apart from reinstatement in his former or other post on the date of his termination. Hence, the workman prayed for allowing him all the unpaid dues payable to him together with the relief of reinstatement granting him temporary status

from the date of completion of 120 days service, and to decide the reference in affirmative.

In his cross-examination the workman stated that in Exhibit-1 at Clause-(1) it has been specifically mentioned that his appointment would not confer upon him any right to claim for further appointment in this Railway and he was liable to be discharged without any notice when his service would not be required by the Administration or before the expiry of the currency of the post against which he was employed or on medical ground or physically incapacity or in the event of posting of an approved hand but he was not aware of the above conditions as he could not understand English. He mentioned that he approached the Officer concerned for his re-employment and he had submitted his representation dated 15.5.07 marked as Exhibit-A. The workman added that after 15.5.07 he did not submit any representation before the management. He also admitted that after missing of his brother he left for Delhi for searching his brother while he informed the wife of his attached officer but he did never said the officer concerned for which he had written the same cause in his representation marked as Exhibit-A. The workman again said that he raised this dispute before the Office of the Labour Commissioner (C), in the year 2011 through his Union. However the workman denied the suggestion tendered by the learned Advocate for the management that he did never visited the officer concerned and requested for his further engagement nor did he submit any written representation; and that he left for Delhi to search his brother without intimation to his authority concerned for which the Management discharged him from service ; and that since he raised this dispute at a belated stage he is not entitled to any relief in this proceeding.

The workman witness No.2, Sri Mridul Kr. Das, the General Secretary of Rail Mazdoor Union, N.F. Zone, Guwahati in his deposition stated that the workman was appointed SE Peon on 8.8.2000 vide the letter issued by the Management marked as Exhibit-1 and the workman joined his duty on 8.8.2000. The workman was attached to Sri Ravi Amrohi, coming on transfer as CE/TP/MLG, N.F.Railway. The W.W.2 said that according to the prevailing mode of engagement of SE Peon the workman was initially appointed for 3 months only but extended for further period depending on the satisfaction of the officer with whom he was attached till he attained temporary service status after 120 days continuous satisfactory service, and the Controlling Officer has to certify the workman's service as SE Peon is satisfactory under him at the end of 90 days service and thereafter his service is extended further. The workman was in continuous service for more than 120 days from the date joining till the date of his termination on 16.4.01 and he was not in receipt of any show cause notice or any other adverse remarks or warning from the Railway Administration as to his unsatisfactory service, if any. Therefore the service of the workman was extended

on completion of continuous period of 120 days as the service of the workman was satisfactory all along, and there is no provision of law to keep the workman in service otherwise the terms and conditions of his engagement. He also mentioned that the order discharging the workman from service vide Exhibit-2 was issued under a signature which was not in full nor the Terminating Authority's name and designation mentioned in the order, without following the due procedure as established by the law and the relevant rule framed thereunder. He further stated that the substitutes are defined and their service conditions are provided for in Rule 1512 to 1516 of the Indian Railway Establishment Manual 1989 (Revised Edition) (vide Exhibit-3), and in the Master Circular on the Appointment of Substitute on Railway Board issued by Railway Board/Ministry of Railway together with Circular No.E/205/O/RP-EMERGENCY PEON/PC/ CON Dated 15.02.1999 vide Exhibit-4 & Exhibit-5 respectively. Mr. M.K.Das added that according to Railway Establishment Rule the substitute who has been in 4 months continuous service shall be entitled to all the rights and privilege admissible to the temporary Railway Servant as per R. B. No.E(NG) 11/77/SB 37 of 24.10.1976; and that the substitutes who have already acquired temporary status should be immediately screened for employment and their services should not be artificially broken merely to deprive them from the benefit of attaining temporary status by dint of labour. He also added that it is already provided in the General Manager, N.F.Railway letter No.83-E/1/pt WE iv dated 31.12.1997 that "Peons are engaged as substitutes and as such they are entitled to temporary status on completion of 120 days of continuous service and with the temporary status they are to be provided with all the facilities as are applicable to other temporary status holders. Therefore the order passed by the Management in terminating the service of the workman is without authority of law and contradictory to their own order and as such, the Management have acted in a way designed to deprive the workman from engagement as SE Peon with another officer and the same officer was allowed a freshman as his SE Peon. He also referred the provision in Para E of the Circular marked a Exhibit-5 that while Emergency Peon who has not attained the temporary status can be terminated and it will not be the case when he attained temporary status or becomes or regular grade-D employees as it calls for disciplinary action which requires all the requisite rules and formalities as applicable to the regular employees are to be followed. The W.W.2 further said that the management has violated the provision of payment of Notice Pay as provided under Rule 301(1) of Indian Railway Establishment Code 1985 as the notice pay was not paid within 48 hours of retrenchment/termination to the workman. He also added that the management also violated the provision of law of the land regarding notice pay as the BR issued for paying the workman the notice pay under AB No. C003270401

dated 25.4.2001 and CO7 05/508 dated 26.04.2001 but the payment was not advised to the workman for his collection through the hand bill entrusted to Cash Office, Maligaon for payment to the workman, and the hand bill remained unpaid due to unclaimed by the workman as the workman was not intimated with the payment ready for him. He further said that the workman gathering about the unpaid bill came over and received the amount of the BR of Rs. 3035/- and as such the workman remained unsatisfied with the partial payment on account of the illegal termination as he was not paid his leave salary, Productivity Linked Bonus for 2000-2001 and retrenchment compensation. The W.W.2 again said that the BR for paying him the notice pay is under AB No. C 003270401 dated 25.04.2001 and CO7 No.05/508 dated 26.04.2001 which fact was replied to by the management as being not available because according to the reply such records are preserved for 10 years only and in this connection a formal reply received under RTI Act from SDGM –cum- Appellate Authority, N.F. Railway under No. NFR/RTI Cell/2011/1842 Dated 26.7.11 against Request/First Appeal from the workman which are proved as Exhibit-7 & Exhibit-8. The WW.2 again mentioned that the workman had a legitimate expectation for his job after serving for a period of 252 days without break, and yet the workman failed to get the reasonable notice and a reasonable opportunities from the management which was required within the ambit of law and as such, it caused miscarriage of justice. Thus the impugned termination order was unwise which destroyed the career of the workman and blocked the future employment and legitimately expected fresh appointment in the job of substitute with some other officer and to be governed by rules applicable to temporary Railway servants. Thereby the management had not adhered to the provision of their own Circular regarding choice in regard to Engagement of fresh face.

During his cross-examination the W.W.2 stated that after his termination with effect from 16.4.01 the workman did not submit any written representation before the management for his re-employment. He also said that in Exhibit-A, the workman admitted that due to missing of his younger brother sometimes since he went for searching his brother for which his service was terminated. However, he denied the suggestion tendered by the management that the workman was discharged due to his unauthorized absence and that since the workman was discharged from service on 16.4.01 and the workman came to this Tribunal in 2014 raising the dispute before the Labour Commissioner (C), as such, the workman is not entitled to any relief in this reference.

6. On scrutiny of the evidence of the workman along with the documents relied upon them it appears that the workman was engaged as SE Peon and was posted in Chief Engineer, N.F.Railway's Office on 8.8.2000 against the existing vacancy of work charged post. According to the workman he completed 120 days of continuous service and obtained the temporary status of Railway servant for

further continuation of his service and in this way he was allowed to remain in service beyond the terms and conditions of his engagement for a period of 252 days up to 16.4.01 i.e. the date of his removal from the service; and that the termination order was issued by the Management vide No.E/283/45(E) dated 6.9.01 (Exhibit-2) which was signed by some one without intelligible name and designation and without following the due procedure as established by law. The workman pleaded that he was deprived of from easy and routine engagement as SE Peon with another officer even though he showed such engagement and more officers were allowed SE Peon attached to them after his termination, and such the action of the management is contradictory to the Policy as enshrined in Para-E of Circular dated 15.2.99 marked as Exhibit-5. On perusal of the termination letter dated 6.9.01 (Exhibit-2) it appears that the workman Dipak Sharma SE Peon was terminated with effect from 16.4.01 with 14 days pay in lieu of notice and in the said letter the status of the workman was mentioned as temporary Railway Servant; but the names of the signatory of this letter has not been mentioned. Simply there is mentioned below the signatures of the issuing authority as “Signature of the Appointing Authority or Higher Authority without any designation”. While in Para-E of the revised policy for engagement/ retrenchment etc. of Emergency Peon (Exhibit-5) it is mentioned as under:

“(E) DISCHARGE/TERMINATION OF SERVICES OF E/PEONS

1. Termination of the services of E/Peon is a sensitive aspect and this is required to be dealt with utmost caution so that relevant provisions of the Establishment Code as well as that of Industrial Disputes Act are not infringed. In view of this , it is felt necessary that the existing procedures for termination of services of E/Peon are reiterated for information and guidance of all concerned. It is clarified that all termination letters have to be issued from Personnel Branch and not directly by the Executive Branch. Necessary guidelines for termination of E/Peon are detailed below:-
2. Rule 301(1) of Indian Railway Establishment Code, Volume-I, is the relevant rule under which termination of service of Emergency Peon is to be resorted to.

But the termination order (Exhibit-2) appears to have been signed & issued by the Appointing Authority of Higher Authority without mentioning the designation and also there is nothing to show that Exhibit-2was issued from Personnel Branch. Thus it is clear that the order terminating the service of the workman was issued without

following the due procedure as established by law and the relevant rules framed there under. The Rules 1512 to 1516 of the Indian Railway Establishment Manual 1989 marked as Exhibit-3 and Master Circular dated 29.1.91 marked as Exhibit-4 shows that the Substitutes should be afforded all the rights and privileges as may be admissible to the temporary Railway Servant, from time to time on completion of 4 months continuous service, and that after completion of 4 months of continuous service they acquired the status of temporary Railway Servant. In the Railway Circular regarding Emergency Peon-Revised Policy for engagement/retrenchment etc. at Para E(6)(Exhibit-5) it has been clearly mentioned that while Emergency Peon has not attained the temporary status can be terminated, it will not be the case when he attains temporary status or becomes a regular grade-D employees as it calls for disciplinary action which require all the requisite rules and formalities as applicable to the regular employees are to be followed; and the provision of 301 of Indian Railway Establishment Code Volume-I should be borne in mind. In the instant case it is found that the workman joined as Emergency Peon on 8.8.2000 and was terminated from service on 16.4.2001, as such it is clear that the workman was terminated after conferment of his temporary status by operation of law,without holding any departmental enquiry by the management.

During argument Mr. A.K.Nath, learned Advocate for the Management of N.F.Railway submitted that the workman was terminated from service due to his unauthorized absence from duty which is found to be admitted fact from the representation dated 15.5.07 submitted by the workman before the General Manager, N.F.Railway, Maligaon with prayer for his reengagement vide Exhibit-A wherein the workman mentioned that due to missing of his only younger brother he had to proceed for searching the brother for which he could not attend the duty for some time and at that time he had been working as daily wage earner. Mr. Nath further submitted that the workman soon after his termination did neither preferred any appeal before the Management and he was sleeping over his right for a long time and thereafter he raised this dispute through the Union before the Assistant Labour Commissioner (C), Guwahati and as such, this reference is barred by limitation. In support of his contention Mr. Nath, learned Advocate for the Management referred the decision of the Hon’ble Supreme Court in Ajaib Singh –vs— Sirhind Coop published in 1999 (2) SCR 505. But the ratio of the said case is found not in support of his argument. Since the Hon’ble Supreme Court in that case opined that on account of the admitted delay the Labour Court ought to have appropriately moulded the relief by denying the appellant-workman some part of the back wages; and also observes as:

“In the instant case, the respondent-management is not shown to have taken any plea regarding delay

as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the court that such a plea was not sustainable after the reference was made by the government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by High Court in Writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just fight between equals," the court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in derogation of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. The High Court appears to have substituted its opinion for the opinion of the labour court which was not permissible in proceedings under Articles 226/227 of the Constitution."

7. Mr. M.K.Das, learned counsel for the Union representing the workman submitted that the Indian Limitation Act is not applicable in the present reference since there is no provision for limitation made in the I.D. Act, 1947.

The Hon'ble Supreme Court in Haryana Land Reclamation and Development Corporation Ltd.—vrs—Nirmal Kumar (2008)(2) SCC 366 wherein it was held that delay in making the reference depends upon what time lapse constitutes delay would depend on facts of each case; and that reference may about six years after retrenchment employer also suffering from losses since many years, backwages payable to workman restricted to Rs.10,000/- . Mr. Das, the learned Counsel for the Union also submitted that in Tilokchand Motichand & Ors—v—H.B. Munshi & Anr, it was held that the question is one of discretion for the Court to delay from case to case; there is no lower limit and no upper limit, a case may be brought within limitation Act by reason of some Article but this Court need not necessarily give the total

time to the litigant to move this Court under Article 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time.

From the materials on record it appears that the workman being a poor, temporary Railway servant as SE Peon, after his dismissal knocked the door of the Appellate Authority by filing appeal, all his efforts were in vain and thereafter he took up the matter with the Union which raised the dispute before the Management and on failure to settle up the same the Union referred the matter to the ALC (C), Guwahati for settlement. Upon failure of the conciliation in presence of the ALC (C), Guwahati, the FOC report was submitted to the Central Government which refer the dispute to this Tribunal and in this way it took sufficient time. Although there is no evidence on record showing specifically the cause of delay in raising the dispute, with a view to achieve the objectives of the Legislature to promote welfare of the workmen in enacting the Industrial Dispute Act, I find no reason to reject the reference on the ground that it was filed at a belated stage. As such, the argument raised by the Management contending that the present reference is no maintainable since it was filed beyond the period of limitation.

8. From evidence on record it is found well established that the service of the workman was terminated after discharging his duty for a period with effect from 8.8.2000 to 16.4.01 for 252 days i.e. after acquiring the status of a temporary Railway Servants without holding any enquiry nor issued any prior notice to the workman. Further, the termination order was issued on 6.9.01 terminating the workman with effect from 16.4.01 *vide* the letter marked as Exhibit-2 which is also found not in proper form as well as not issued by the appropriate authority in accordance with the rules and the provision of Railway Manuals and Circulars issued from time to time *vide* Exhibit-3, Exhibit-4 & Exhibit-5 as discussed above. There is also noting on record to show that before his termination. The workman was served with any prior notice nor any enquiry was held in connection with his termination the workman represented the management for his re-engagement *vide* Exhibit-A which was not considered by the Appropriate Authority although the management is duty bound to dispose of the representation/appeal in due course. Even the management could neither produce any document nor adduce any evidence in order to prove their pleadings in their W.S. to challenge the contention of the union as made in their claim statement. It is also revealed from the record that some original documents were called for from the custody of the management regarding appointment of the workman including the termination of the workman, payment of notice pay, the appeal submitted by the workman etc. but the management categorically mentioned that they could not trace out the documents (*Vide* order dated 4.3.2015), and as such, the

document proved as Exhibit-8 and Exhibit-A which were proved on admission of the management. The Management in course of cross-examination of the workman witnesses took the plea that the workman had been absent without authority for a long time for which his service was terminated but there is nothing on record to show that in terminating the service of the workman the due procedure of law as well as the Railway Manual marked as Exhibit-3, the Master Circular on appointment of Substitutes of Railways *vide* Exhibit-4, the Revised Policy for engagement/retrenchment etc. of the Emergency Peon *vide* Exhibit-5 complied with by the management. It is found well established that the Substitute Emergency Peon after acquiring temporary status are entitled to all the benefits and privileges which are being availed by the regular Railway employees and in such a case it is mandatory on the part of the management to give opportunity to the workman to be heard before terminating his service. Article 311 (2) provided that no person who is a member of Civil Services of the Union or of All India Service or a Civil Service of a State or holds a Civil Post under the Union or a State shall be dismissed or removed or reduced in rank accept if an enquiry in which he has been informed of the charges against him and given the reasonable opportunity of being heard in respect of those charges. The Hon'ble Supreme Court in a catena of cases held that reasonable opportunities as envisaged by Article 311(2) should be afforded to the workman before his dismissal/removal/termination and that the authority concerned empowered with the task of entertaining appeal who applied their mind on the representation of the delinquent. The Hon'ble Supreme Court in the case reported in AIR 2008 SC 1300 (A) held that the power to impose punishment without enquiry in case of conviction for criminal offence not to be exercised irrespective of nature of offence and as such the order of dismissal from service is not proper nor could be said to be proportionate. In the case of V.P.Ahuja—vrs— State of Punjab and Ors. reported in (2000) 3 SCC 239 wherein it was held that a probationer like a temporary servant is also entitled for certain protection, his service can not be terminated arbitrarily or punitively without complying with the principle of natural justice; and that the termination order could not be passed without following the regular enquiry.

9. The Union has been able to establish that the workman after his dismissal represented *vide* Exhibit-A before the Appellate Authority for his reinstatement but there is nothing on records to show that his appeal was entertained. In this regard I am inclined to rely upon the decision of the Hon'ble Supreme Court in Ram Chander—vrs— Union of India and Ors. reported in AIR 1986 SC 1173 wherein it was held that “it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing

with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given.”

From my above discussion it is found well established that the workman after acquiring the status of Railway servant was deprived of availing the protection as envisaged under Rule 31 of the Railway Establishment Code, Rule 1512 to 1515 (Exhibit-3, the Master Circular No. E(NG)/11/90/SB/Master Circular (Exhibit-4) and the Railway's letter No. E/2005/O/RP-Emergency Peon/PC/ CON dated 15.2.99 (Exhibit-5) and the Discipline and Appeal and Conduct Rules of Railway. The workman was also denied the Constitutional safeguard as envisaged in Articles 14,16 and 31 of the Constitution of India as well as the principle of natural justice.

In this connection, before parting with my discussion it may not be out of context to mention here that in the Schedule of the reference it has been mentioned “Whether 18.7.2001 termination of Shri Deepak Sharma, Substitute E/Peon, who has been represented by the General Secretary, Railway Mazdoor Union, 239/A, East Maligaon, Guwahati-11 from service by the employer-Appointing Authority of N.F.Railway, Maligaon, Guwahati is legal and justified? If not, then applicant-workman is entitled to get any compensation?” While both the management and the Union in their pleadings as well as the evidence of the Union mentioned that the workman was terminated from his service with effect from 16.4.2001. As such there is no dispute as to the date of termination of the workman from service i.e. 16.4.01 and hence, the date of termination of the workman is treated as 16.4.01 in lieu of 18.7.01.

10. In view of my above discussion and having regard to the decision of the Hon'ble Supreme Court it can safely be held that the action of the management in terminating the service of the workman Deepak Sharma, SE Peon was in violation the provision of the Railway Manual, Master Circulars & the instruction issued from time to time, as well as in derogation of principle of natural justice. As such an action of the management of N.F.Railway, Maligaon, Guwahati is illegal and not justified. Accordingly it is held that the workman is entitled to relief.

In the face of the findings arrived at as above, it is held that the workman is entitled to be reinstated as SE Peon or in Group-D or now equivalent post in Railway with his inter se seniority as on the date of his engagement. As regards the backwages as claimed by the workman it may be mentioned here that the workman has not been able to substantiate his claim for backwages

showing that he was not engaged in any occupation of profit and that he remain without any job. However it is also found in his evidence that the workman was employed as casual worker after his dismissal. In this connection I am inclined to rely upon the decision of the Hon'ble Supreme Court in Rajasthan Lalit Kola Academy –vrs— Radhey Shyam published in 2008 LAB IC 3894,

“Once the termination of service of an employee is held to be illegal, the relief of reinstatement is ordinarily available to the employee. But the relief of reinstatement with full back-wages need not be granted automatically in every case where the Labour Court/Industrial Tribunal records the finding that the termination of services of a workman was in violation of the provisions of the Act. For this purpose, several factors, like the manner and method of selection; nature of appointment—ad hoc, daily-wage, temporary or permanent etc., period for which the workman had worked and the delay in raising industrial dispute, are required to be taken into consideration.”

In Pramod Kumar Dubey—vrs— Presiding Officer, CGIT-cum-Labour Court and 3 otrs published in 2014 LLR 1157(Allahabad), it was held that “reinstatement with backwages not a rule; and relief of reinstatement in cases of wrongful dismissal of an employee, depends upon host of factors like manner and method of appointment, nature of employment, length of services, etc.”

The Hon'ble Supreme Court in U.P. State Brassware Corporation Ltd.—vrs— Udai Narain Pandey, 2006 (1) SCC 479;

“18. Coming back to back-wages, even if the Court finds it necessary to award back-wages, the question will be whether back-wages should be awarded fully or only partially (and if so the percentage). This depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding backwages, in addition to the several factors mentioned in Rudhan Singh (supra) and Udai Narain Pandey (supra). Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee can not be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is however, no obligation on the terminated employee to search for or secure alternative employment.”

11. From the materials on record it is found that the workman during his employment as SE Peon remained

absent without any authority for some time and he also was found too late in raising the dispute and hence, there is some negligence and latches on the part of the workman to fight for his causes for which the management is not liable to shoulder the responsibility of the backwages for the whole period of his absence from the duty with effect from 16.4.01. In this regard I find it wise to award a lump sum amount of compensation in lieu of the back-wage, which I hope will meet the ends of justice. Accordingly an amount of Rs.2,00,000/- (Rupees two lakhs) is awarded as lump sum money towards his back-wages.

12. Accordingly this reference is disposed of awarding re-instatement of the workman as SE Peon , or group D or the equivalent post now available with a lump sum back-wages amounting to Rs.2,00,000/- (Rupees two lakhs) in favour of the workman.

Send the award to the Ministry as per procedure.

Given under my hand and seal of this Court on this 30th day of September,2015, at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टैंडर्ड चार्टर्ड बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 03/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2015 को प्राप्त हुआ था।

[सं. एल-12012/17/2015-आईआर (बी-I)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 30th November, 2015

S.O. 2237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between management of Standard Chartered Bank and their workmen, received by the Central Government on 30-11-2015.

[No. L-12012/17/2015-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 03 of 2015

Parties :

Employers in relation to the management
of Standard Chartered Bank

and as such the union does not want to proceed with the case further. Ld. Counsel for the management submits that the management has got no objection if no dispute award is passed.

3. Since the union at whose instance, instant reference has been initiated, does not want to proceed with the matter further, this Tribunal has no other alternative but to dispose of the reference by passing a "No Dispute Award".

3. In view of the above, instant reference is disposed of by passing a "No Dispute Award".

Dated, Kolkata,
The 3rd November, 2015

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 34/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2015 को प्राप्त हुआ था।

[सं. एल-41011/94/2014-आईआर (बी-I)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 30th November, 2015

S.O. 2239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between management of Western Railway and their workmen, received by the Central Government on 30-11-2015.

[No. L-41011/94/2014-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present :

JUSTICE S. P. MEHROTRA, Presiding Officer

REFERENCE NO. CGIT-1/34 OF 2014

Parties:

Employers in relation to the management of
Western Railway

and

Their workmen

Appearances:

For the first party/ Management No.1 and 2 : Mrs. Jyoti Panvalkar, Adv.

For the second party/ Workman : None present

State : Maharashtra

Mumbai, dated the 5th day of October, 2015

AWARD

1. The present Reference has been made by the Central Government by its order dated 12.12.2014 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the Schedule to the said order are as under:

"Whether the action of the management of Western Railway, Mumbai Division in recovering the amount from the salary of 10 employees as per the list enclosed, to the extent of fake/forged notes received by them at the counter while issuing the railway reservation tickets even after using the fake note detecting machine provided by the Railway Administration, without providing an opportunity to be heard, is just and legal? If not, what relief the workmen are entitled to?"

2. By the Order dated 22.12.2014, this Tribunal directed for issuance of notice to the parties fixing 27.2.2015.

3. As per the directions given in the Order dated 22.12.2014, notices were issued by Registered Post AD to the first party/Management as well as to the second party/ Union.

4. Pursuant to the Order dated 22.12.2014, the case was put up before the Tribunal on 27.2.2015.

5. As noted in the Order dated 27.2.2015, notices issued as per the directions given in the Order dated 22.12.2014 were duly served on the parties, and the respective Acknowledgement Cards had been received back. Mrs. Jyoti Panvalkar, learned counsel for the first party/Management Nos.1 and 2 was present on the said date, i.e., 27.2.2015. However, none was present on behalf of the second party / Union. In the circumstances, by the Order dated 27.2.2015, the case was adjourned to 27.4.2015 for filing Statement of Claim.

6. Pursuant to the Order dated 27.2.2015, the case was put up before the Tribunal on 27.4.2015. As noted in the Order passed on the said date i.e., 27.4.2015, Mrs. Jyoti Panvalkar, filed her Vakalatnama on behalf of the first party/Management Nos.1 and 2. However, despite service of notice, none was present for the second party/Union. In the circumstances, the Tribunal by the Order dated 27.4.2015, adjourned the case to 22.6.2015 for filing Statement of Claim.

7. Pursuant to the Order dated 27.4.2015, the case was put up before the Tribunal on 22.6.2015. As noted in the Order passed on the said date i.e., 22.6.2015, Mrs.Jothi Panvalkar, learned counsel for the first party/Management Nos.1 and 2 was present. However, none was present on behalf of the second party / Union. In the circumstances, the Tribunal by the Order dated 22.6.2015, adjourned the case to 31.8.2015for filing Statement of Claim.

8. Pursuant to the Order dated 22.6.2015, the case was put up before the Tribunal on 31.8.2015.

9. On 31.8.2015, as noted in the Order passed on the said date, Mrs.Geeta Raju holding brief for Mrs.Jothi Panvalkar, learned counsel for the first party/Management Nos.1 and 2 was present. However, none was present on behalf of the second party / Union. In the circumstances, the Tribunal by the Order dated 31.8.2015, adjourned the case to 5.10.2015 for filing Statement of Claim.

10. Pursuant to the Order dated 31.8.2015, the case is put up today.

Mrs.Jothi Panvalkar, learned counsel for the first party/ Management Nos.1 and 2 is present. However, none is present on behalf of the second party/Union. No Vakalatnama on behalf of the second party/Union has been filed. No Statement of Claim has so far been filed on behalf of the second party/Union.

11. From the above narration of facts, it is evident that despite service of notice and despite the case having been repeatedly adjourned on various dates, none has put in appearance on behalf of the second party/Union. No Statement of Claim has so far been filed on behalf of the second party/Union.

12. Thus, it is evident that there is neither any pleading nor evidence filed on behalf of the second party/Union in support of the Claim as contained in the aforesaid Reference.

13. No relief can, therefore, be granted to the second party/Union.

14. The Reference made to this Tribunal is consequently answered by stating that no relief can be granted to the second party/Union.

15. Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य विहार ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, धनबाद के पंचाट (संदर्भ संख्या 26/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2015 को प्राप्त हुआ था।

[सं. एल-12011/32/2015-आईआर (बी-I)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 30th November, 2015

S.O. 2240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between management of Madhya Bihar Gramin Bank and their workmen, received by the Central Government on 30-11-2015.

[No. L-12011/32/2015-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE NO 26 OF 2015

PARTIES:

The President,
Bihar Provincial Gramin Bank
Employees Association,
Saboo Complex, Behind Hotel Republic,
Exhibition Road, Patna (Bihar)-1

Vs.

The Chairman,
Madhya Bihar Gramin Bank,
H.Q: Meena Plaza, South of Museum,
Patna (Bihar)-1.

Order No.L-12011/32/2015-IR(B-I)
dt.17.04.2015.

APPEARANCES:

On behalf of the : Mr. B. Prasad, Union
Workman/Union Representative

On behalf of the : Mr. Dhananjay Kumar,
Management Manager as Representative

State : Bihar Industry : Banking

Dated, Dhanbad, the 19th Oct., 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12011/32/2015-IR (B-I) dt.17.04.2015.

SCHEDULE

“Whether the action of the Management of Madhya Bihar Gramin Bank (MBGB) to terminate the service of workman Sri Awadhesh Prasad was correct and valid when he demanded for regularization of his service? If not, what relief the workman is entitled for?”

2. Neither the Union Representative nor the workman concerned nor any Representative for Management made appearance despite several opportunities provided to the both litigant parties, though a petition was moved by the Union Representative/Workman before the Court on 29.09.2015 to close the case as the case stands for filing of W.S by the workman.

On perusal of the case record, it seems that the both the parities have no longer interested to contest the case since its inception after its registration on 17.04.2015. It also appears that there is no dispute existing in between the both the parties as the workman concerned is not inclined to contest the case as the written petition moved by the Union Representative. Under these circumstances, it would not be proper to drag it on for uncertain period. Thus the case is closed and a ‘No Dispute’ is passed. Accordingly, a ‘No Dispute Award’ is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड तथा मैसर्स बिहिव सिक्यूरिटि एण्ड सर्विलेंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 140/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11. 2015 को प्राप्त हुआ था।

[सं. एल-30012/49/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 30th November, 2015

S.O. 2241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/2012) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure

in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd., M/s. Beehive Security and Surveillance and their workman, which was received by the Central Government on 26-11-2015.

[No. L-30012/49/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**IN THE COURT OF SHRIAVATAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 140/2012

Shri Surat Singh,
S/o Shri Girdhari Lal,
R/o House No.480, Sector 7,
Housing Board Colony,
Bahadurgarh, Distt. Jhajjar,
Haryana

...Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s Indian Oil Corporation Ltd.
Tikri Kalan,
Delhi – 110 041
2. M/s Beehive Security & Surveillance,
House No.43, Rathi Enclave,
New Roshan Vihar,
Kakraula More, Najafgarh,
Delhi – 110 043

...Management

AWARD

Central Government, *vide* letter No.L-30012/49/2012-IR(M) dated 28.10.2012, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s Beehive Security & Surveillance in terminating the services of Shri Surat Singh, S/o Shri Girdhari Lal from IOC Depot, Tikri Kalan, Delhi with effect from 20.09.2011, is legal and justified? What relief the workman is entitled to?”

2. Claim statement was filed by the workman and written statements were filed by both the managements. On perusal of pleadings, it was observed by my learned predecessor, on 30.07.2013, that no other issue, than those referred by the appropriate Government for adjudication was made out. Thereafter, the case was listed for evidence of the parties, with directions to the claimant to conclude first. However, despite affording 17 opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal

so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 20, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कापोरेशन लिमिटेड तथा मैसर्स बिहिव सिक्यूरिटि एण्ड सर्विलेंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 143/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2015 को प्राप्त हुआ था।

[सं. एल-30012/42/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 30th November, 2015

S.O. 2242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 143/2012) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd., M/s. Beehive Security and Surveillance and their workman, which was received by the Central Government on 26-11-2015.

[No. L-30012/42/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE COURT OF SHRIAVATAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 143/2012

Shri Ram Chander,
S/o Shri Tek Chand,
R/o Village Bhaproda,
Tehsil Bahadurgarh,
Distt. Jhajjar,
Haryana Pana 12 Bisa

...Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s Indian Oil Corporation Ltd.
Tikri Kalan,
Delhi-110 041
2. M/s Beehive Security & Surveillance,
House No. 43, Rathi Enclave,
New Roshan Vihar,
Kakraula More, Najafgarh,
Delhi-110 043
...Management

AWARD

Central Government, *vide* letter No.L-30012/42/2012 IR(M) dated 28.10.2012, referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s Beehive Security & Surveillance in terminating the services of Shri Ram Chander, S/o Shri Tek Chand from IOC Depot, Tikri Kalan, Delhi with effect from 20.09.2011, is legal and justified? What relief the workman is entitled to?

2. Claim statement was filed by the workman and written statements were filed by both the managements. On perusal of pleadings, it was observed by my learned predecessor, on 30.07.2013, that no other issue, than those referred by the appropriate Government for adjudication was made out. Thereafter, the case was listed for evidence of the parties, with directions to the claimant to conclude first. However, despite affording 17 opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 20, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कापोरेशन लिमिटेड तथा मैसर्स बिहिव सिक्यूरिटि एण्ड सर्विलेंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या

142/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2015 को प्राप्त हुआ था।

[सं. एल-30012/53/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 30th November, 2015

S.O. 2243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 142/2012) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd., M/s. Beehive Security and Surveillance and their workman, which was received by the Central Government on 26-11-2015.

[No. L-30012/53/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**IN THE COURT OF SHRIAVATAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 142/2012

Shri Sushil Kumar,
S/o Shri Dhan Ram,
R/o Village Sisana,
Distt. Sonipat,
Haryana ...Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s Indian Oil Corporation Ltd.
Tikri Kalan,
Delhi-110 041
2. M/s Beehive Security & Surveillance,
House No. 43, Rathi Enclave,
New Roshan Vihar,
Kakraula More, Najafgarh,
Delhi-110 043 ...Management

AWARD

Central Government, *vide* letter No.L-30012/53/2012-IR(M) dated 28.10.2012, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s Beehive Security & Surveillance in terminating the services of Shri Sushil Kumar, S/o Shri Dhan Ram from IOC Depot, Tikri Kalan, Delhi with effect from 25.08.2011, is legal and justified? What relief the workman is entitled to?”

2. Claim statement was filed by the workman and written statements were filed by both the managements. On perusal of pleadings, it was observed by my learned predecessor, on 30.07.2013, that no other issue, than those referred by the appropriate Government for adjudication was made out. Thereafter, the case was listed for evidence of the parties, with directions to the claimant to conclude first. However, despite affording 17 opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 20, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड तथा मैसर्स बिहिव सिक्यूरिटि एण्ड सर्विलेंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 141/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2015 को प्राप्त हुआ था।

[सं. एल-30012/51/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 30th November, 2015

S.O. 2244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/2012) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd., M/s. Beehive Security and Surveillance and their workman, which was received by the Central Government on 26-11-2015.

[No. L-30012/51/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**IN THE COURT OF SHRIAVATAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 141/2012

Shri Ram Singh,
S/o Shri Jai Narayan,
R/o Village Garhi Sisana,
Post Sisana, Distt. Sonipat,
Haryana ...Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s Indian Oil Corporation Ltd.
Tikri Kalan,
Delhi-110 041
2. M/s Beehive Security & Surveillance,
House No. 43, Rathi Enclave,
New Roshan Vihar,
Kakrula More, Najafgarh,
Delhi-110 043 ...Management

AWARD

Central Government, *vide* letter No.L-30012/51/2012-IR(M) dated 28.10.2012, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. Beehive Security & Surveillance in terminating the services of Shri Ram Singh, S/o Shri Jai Narayan from IOC Depot, Tikri Kalan, Delhi with effect from 12.10.2011, is legal and justified? What relief the workman is entitled to?

2. Claim statement was filed by the workman and written statements were filed by both the managements. On perusal of pleadings, it was observed by my learned predecessor, on 30.07.2013, that no other issue, than those referred by the appropriate Government for adjudication was made out. Thereafter, the case was listed for evidence of the parties, with directions to the claimant to conclude first. However, despite affording 17 opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 20, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 नवम्बर, 2015

का.आ. 2245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लाइफ इंश्योरेंस कार्पोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 82/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2015 को प्राप्त हुआ था।

[सं. एल-17025/6/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 30th November, 2015

S.O. 2245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2013) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 26-11-2015.

[No. L-17025/6/2015-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**IN THE COURT OF SHRIAVATAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 82/2013

Shri Vimal Kumar,
S/o Late Shri Mam Chand,
C/o 99 C, Pocket I,
Dilshad Garden,
Delhi 110 095 ...Workman

Versus

1. The Senior Divisional Manager,
Division Office, Life Insurance
Corporation of India,
Jiwan Prakash,
Meerut 250 001
2. The Zonal Manager,
North Central Zone,
Life Insurance Corporation of India,
3. The Chairman,
Life Insurance Corporation of India,
Jiwan Beema Marg,
Mumbai 400 021 ...Management

AWARD

Briefly, Shri Vimal Kumar, the claimant herein has filed a petition under sub-section 2 of section 2A of the Industrial Disputes Act, 1947(in short the Act), with the averments that he was appointed as Development Officer by the management in the pay scale of Rs.2660-7520 and was confirmed by the management on 26.04.2001. Workman remained posted as Development Officer in CBO-3, Sahibabad, District Ghaziabad, Uttar Pradesh with effect from 26.04.2000 to 28.08.2012. Work and conduct of the workman was excellent but unfortunately he was placed under suspension by the management on 16.12.2003. After a long suspension of 8 years, 8 months and 22 days, workman was ultimately dismissed from service by the management vide order dated 29.08.2012. During the period of suspension, workman was paid 50% initially and after 2004, 75% was paid as subsistence allowance. No other benefits were given to the workman during this period. Charge sheet was also observed upon the workman containing various charges which are mentioned in para 11 of the statement of claim. Workman was not supplied with copies of evidence recorded during the course of enquiry. Workman filed his reply to the departmental enquiry and order of punishment, i.e. Dismissal from service vide order dated 29.08.2012 has been alleged to be null and void and without application of mind. It has been alleged that the disciplinary authority has not followed rules and regulations as well as principles of natural justice and passed order in breach of law laid down by the Hon'ble Apex Court and various rulings. Finally, prayer has been made for quashing of order dated 29.08.2012 and reinstatement in service from the said date with full back wages.

2. Reply to the petition has been filed on behalf of the management wherein preliminary objections regarding non disclosure of cause of action, non-maintainability of the claim petition etc. have been taken. It is also alleged that the workman herein is not a workman within the meaning of Section 2(s) of the Act. He was a class II officer. Reliance has been placed upon the judgement of the Hon'ble Supreme Court in the case of H.R. Adyanthaya & Ors. Vs. Sandoz India) Ltd. & Ors. (1994) 5 SCC 737. Further, it is alleged that alternative statutory remedy is available to the workman. The management has also alleged that the enquiry is perfectly in accordance with rules and regulations and punishment awarded is legally valid and has made a prayer for dismissal of the claim.

3. My learned predecessor vide a order dated 29.08.2013, framed the following issues:

- (i) Whether the claimant is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947?
- (ii) Whether enquiry conducted by the management is just, fair and proper?

(iii) Whether punishment of dismissal awarded vide order dated 29.08.2012 commensurate to his misconduct?

(iv) Whether claimant is entitled to relief of reinstatement in service of the management.

4. Issue No.(i) and (ii) were treated as preliminary issues and parties were directed to adduce evidence on the same.

5. However, when the case was at the stage of evidence, an application was moved on behalf of the workman for withdrawal of the case and reference was made to the judgement of the Hon'ble Supreme Court in the case of Chauharya Tripathi and others Vs. LIC of India & Ors.(2015) 7 SCC 263 and in that it was held that Development Officer does not fall within the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947.

6. I have carefully gone through the ratio of judgement in the above noted case. It is clear from perusal of the above judgement that the Hon'ble Supreme Court has set at rest the controversy that Development Officer does not fall within the definition of 'workman' within the meaning of Section 2(s) of the Act. In view of this, petition filed by the workman herein is not legally maintainable before this Tribunal inasmuch as workman herein does not fall within the definition of 'workman' defined in the act. Consequently, permission is granted for withdrawal of the above petition. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 19, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2015

का.आ. 2246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई.एस. आई. कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 245/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2.12.2015 को प्राप्त हुआ था।

[सं. एल-15012/2/1993-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 2nd December, 2015

S.O. 2246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 245/1993) of the Central Government Industrial Tribunal/

Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ESI Corporation and their workman, which was received by the Central Government on 2-12-2015.

[No. L-15012/2/1993-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/245/93

Shri Nikhil Jani,
Flat No.9/2, Analtas Complex,
Near Manisha Market,
Shahpura, Bhopal ...Workman

Versus

Manager,
ESI Corporation,
New Subhash Nagar,
Bhopal

AWARD

Passed on this 17th day of November 2015

1. As per letter dated 13-12-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-15012/2/93-IR(Misc.)The dispute under reference relates to:

“Whether the action of the management of ESIC in terminating the services of Shri Nikhil Jani w.e.f. 1-4-91 is justified? If not, to what relief, the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 7/1 to 7/5. Case of Ist party is that he was appointed in ESI Corporation as LDC on 9-4-85. He worked with honesty and dedication. His service record was unblemished. Chargesheet was issued to him on 22-6-90 alleging certain misconduct. That Ist party workman had taken frequent leave. He submitted reply to chargesheet on 9-11-90 denying charges against him. That issuing chargesheet and calling his explanation was empty formality. The Disciplinary Authority has already made up mind to hold enquiry against him of charges alleged on 22-6-90. That Shri R.K. Kapoor was appointed as Enquiry officer. Shri P.C. Verma was appointed as Presenting Officer. Both of them were from legal background. Ist party workman was unaware of legal procedure in DE. Despite mandatory provisions in Service Rules, his request for appointing co-worker to Shri P.S. Malane was rejected. Enquiry Officer

was acting under control of Disciplinary Authority. The Enquiry Proceeding was conducted without proper intimation to him in violation of service rules and principles of natural justice. Enquiry Officer recorded statement of management's witnesses in his absence without prior intimation to him. He was not supplied copy of Enquiry Report, showcause notice was not issued to him before imposing punishment of removal from service. The punishment imposed against him is excessive. The Disciplinary Authority was determined to remove him from service. Chargesheet was issued to him with said oblique motive. Workman challenged removal of his service before Appellate Authority, his appeal was dismissed. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 6/1 to 6/2 opposing claim of workman. 2nd party submits that workman was appointed as LDC on 9-4-85. Chargesheet was issued to him on 22-6-90. Charges alleged pertains to frequently availing leave without notice, disobeying orders of Manager. Workman was absent from 11-7-89 to 13-7-89 and 11-7-89 to 10-8-89 without intimation. Workman was conducted ex parte. All charges against workman were proved. As per Enquiry Report, workman was given opportunity for his defence. He failed to avail the same. The appeal filed by workman was rejected by speaking order. The dispute raised by workman is not tenable.

4. Supplementary Written Statement is filed by 2nd party at Page 9/1 to 9/4. Appointment of workman as LDC on 9-4-85 is admitted. It is denied that service record of workman was unblemished. Workman was continuously absent from 11-7-89 to 10-8-89. He did not join duty at new place of his posting at Mandsor. Enquiry officer sent intimation to the workman. Workman had submitted his resignation on 9-11-90. The resignation was not accepted as enquiry was pending against him. It is denied that Enquiry officer and Presenting Officer were from legal backgrounds. Workman submitted written consent for his Defence Assistant P.S.Malani. Workman was given opportunity to inspect relevant documents. However he disassociated from enquiry. Enquiry was conducted ex parte. Workman was given opportunity to submit representations to Disciplinary Authority. letter was received on 22-3-91 with remark refused to accept. Appeal was rejected by Appellate Authority passing speaking orders. 2nd party submits that claim of workman cannot be accepted.

5. As per order dated 17-6-2015, enquiry conducted against workman is found vitiated. 2nd party has not pleaded in Written Statement permission to prove misconduct adducing evidence, case was fixed for final argument.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of ESIC in terminating the services of Shri Nikhil Jani w.e.f. 1-4-91 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. As per order dated 16-6-15, enquiry conducted against workman is found vitiated. Management has not completed permission to prove misconduct by adducing evidence. As enquiry conducted against workman is found vitiated, punishment of removal from service imposed against workman cannot be said legal. For above reasons, I record my finding in Point No.1 in Negative.

8. **Point No. 2-** In view of my finding in Point No.1 that enquiry against is found illegal, management had not requested permission to prove misconduct alleged against workman, no evidence is adduced regarding the charges alleged against workman. Punishment imposed against workman cannot be sustained, question remains for consideration whether workman is entitled for reinstatement with backwages. As discussed above, enquiry is vitiated and management has not adduced evidence to prove charges. Workman in his cross-examination says that he was not allowed to join duty during the Enquiry Proceedings. No evidence is adduced by parties on the point whether workman was in gainful employment after termination of his service. Evidence of workman is silent. Considering above aspects and enquiry was found vitiated, charges are not proved, reinstatement of workman with 50 % backwages would be appropriate. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management of ESIC in terminating the services of Shri Nikhil Jani w.e.f. 1-4-91 is not proper and legal.
- (2) Order of removal of 1st party workman is set aside. 2nd party is directed to reinstate workman with continuity of service and 50 % backwages.
- (3) 2nd party shall also pay cost of proceeding Rs.3000/- to the workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2015

का.आ. 2247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, रतलाम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट

(संदर्भ संख्या सीजीआईटी/एलसी/आर/59/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/11/2015 को प्राप्त हुआ था।

[सं. एल-40012/252/2002-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd December, 2015

S.O. 2247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/59/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited, Ratlam and their workman, which was received by the Central Government on 30/11/2015.

[No. L-40012/252/2002-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/03

Shri Kamla Prasad Tiwari
C/o Saligram Mishra, A-163,
Housing Colony, Vinoba Nagar,
Ratlam (MP)

...Workman

Versus

Telecom District Engineer,
BSNL, Office of TDE,
Ratlam

...Management

AWARD

Passed on this 6th day of November 2015

1. As per letter dated 25-3-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/252/2002-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom District engineer, Ratlam in terminating the services of Shri Kamla Prasad Tiwari w.e.f. 4-11-95 and not regularizing him even after completing 240 days in a calendar year is justified? If not, to what relief he is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Unfortunately it is not signed either by workman or his counsel. Case of workman is that he was initially engaged as casual labour in June 1984 by department of 2nd party. He was getting salary after

putting signature on muster roll. He was given artificial break. Workman continued to work till 1995. He was not issued attendance certificate about working days by department. He was continuously discharging his duties. That 2nd party No.3 issued certificate about his working period. Ministry of Labour, Government of India issued various circulars providing regularization of casual labours. Circular dated 17-12-93 provided to grant temporary status to Government Servants. Ist party workman further submits that completed more than 240 days continuous service during each of the year. He was not granted benefit of regularization of his service. He was denied equality before law in violation of Article 14,16 of the constitution. 2nd party had introduced scheme for regularization of casual labours in 1989. The employees working prior to 30-3-85 and continued to work as on 7-11-89. Casual labour completing 240 days in a year. The claim of workman was not considered for regularization. 2nd party adopted hostile discrimination denying regularization of his service. Original applications 427/96 was filed by workman for regularization of his service. Said petition was dismissed on 9-2-01 observing to approach this Tribunal. Workman prays direction for regularization of his services from the time of his discontinuation.

3. 2nd party filed Written Statement at Page 12/2 to 12/3 opposing claim of workman. 2nd party reiterates that workman had not continuously worked more than 240 days during any of the calendar year. He is not employee under Section 25 B of ID Act. He is not entitled to any relief. The particulars of his working days are given in 2nd para of Written Statement. Workman worked for 69 days in Sept to November 87, 60 days in Sept to Nov-87, 60 days during Feb to July 88. That 2nd party No.3 had not issued any certificate about working of Ist party workman. Ist party workman did not worked with Ratlam Division from July 84 to July 85 & Sept 87 to July 88. Workman not completed 240 days continuous service during any of the year. He was not entitled for benefit of regularization. 2nd party prayed for rejection of claim of workman.

4. Ist party workman filed rejoinder at Page 15/1 to 15/2 reiterating his contentions in statement of claim. Workman reiterates that he worked more than 240 days. That 2nd party be directed to produce record of muster roll, salary payments.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Telecom District engineer, Ratlam in terminating the services of Shri Kamla Prasad Tiwari w.e.f. 4-11-95 and not regularizing him even after completing 240 days in a calendar year is justified?

(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.
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REASONS

6. Term of reference pertains to legality of termination of workman from 4-11-95 and denial of regularization after completion of 240 days continuous service. Workman filed affidavit of his evidence. Workman contented that he was working with 2nd party from July 84 to June 85. Workman in his affidavit says that he was initially engaged as casual labour in June 1994. He was continued in service till 1995. Artificial breaks were shown by the department that 2nd party No.3 had issued certificate dated 14-5-87. That he was working in the department. He completed 240 days continuous service. He was denied regularization. 2nd party discontinued his services without issuing any order. Workman remained absent for his cross-examination. Therefore his evidence cannot be considered.

7. 2nd party filed affidavit of evidence of Harkesh Singh. Management's witness in his affidavit of evidence says that Ist party workman worked for 70 days in September 1987, 23 days in October 87, 29 days in Feb89, total 129 days. Workman was engaged as temporary employee as per exigency. He not completed 240 days during any of the year. Management's witness was not cross-examined on behalf of workman. His evidence remained unchallenged. Workman had not appeared for his cross-examination. He failed to cross-examine management's witness. I find no reason to disbelieve unchallenged evidence of management's witness. Workman has failed to establish that he worked more than 240 days during any of the year. Termination of his service in violation of ID Act is not established. Therefore I record my finding in Point No.,1 in Affirmative.

8. In view of my finding in Point No.1 services of workman is found proper and legal, workman is not entitled to any relief.

9. Ratio relied by Shri R.S. Khare for 2nd party in case of MP State Agro Industries Development corporation and another versus S.C.Pandey reported in 2006(2)SCC-716 and Ajaypal singh versus Haryana Warehousing Corporation reported in 2015(2) SCC(L&S) – 279 needs no discussion as workman has failed to establish that he completed 240 days continuous service during any of the year. Workman is not entitled to any relief. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Telecom District engineer, Ratlam in terminating the services of Shri Kamla Prasad Tiwari w.e.f. 4-11-95 and not regularizing him even after completing 240 days is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2015

का.आ. 2248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधतत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/316/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/11/2015 को प्राप्त हुआ था।

[सं. एल-40012/237/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd December, 2015

S.O. 2248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/316/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 30/11/2015.

[No. L-40012/237/99-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/316/99

Shri Kaluram Malviya,
R/o Mehpura,
Shahapur Distt.Workman

Versus

Chief General Manager,
Dept. of Telecommunication,
Hoshangabad road,
MP Circle, Bhopal (MP)Management

AWARD

Passed on this 6th day of November 2015

1. As per letter dated 21-10-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/237/99/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom in terminating the services of shri Kaluram Malviya w.e.f. 26-3-99 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of 1st party workman is that he was appointed as labour in office of Sub Divisional Engineer, Telecom shajapur i.e. 2nd party No.4 in January 1987. 2nd party No. 2,3 are the Controlling Authorities. That the appointments of casual labour were made with approval of the administration. The management had not taken steps for regularisation of casual employees. Employees Union filed Writ Petition in Hon'ble Supreme Court. The judgment was reported in AIR-1987-SC-2342. The Apex Court had issued direction to the Telecom Department for introducing scheme for regularisation of daily wage labours. Accordingly scheme was introduced by the 2nd party from 7-11-89. The scheme provided regularisation of daily wage employees who worked prior to 30-3-85. In Original Application No. 1476/90, CAT Delhi in case Murari singh Versus Govt. of India held that cut off date in the scheme for giving benefit of regularisation was illegal. 1st party workman submits that the service was satisfactory. Workman was orally terminated on directions of 2nd party No.2,3. His services are terminated without notice, no retrenchment compensation was paid to him. Termination of his service is in violation of Section 25-F of ID Act. Workman had contented that he completed 240 days continuous service without paying retrenchment compensation or issuing notice of termination. The services are orally terminated is illegal. Workman was paid Rs.1200 per month less than minimum wages. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at page 5/1 to 5/2 opposing claim of workman. 2nd party reiterates that workman was never working with establishment of 2nd party. Workman was not appointed since 1987 or 1989. As workman was not working on its establishment, there is no question of completing 240 days of service by workman. Termination of service of workman in violation of Section 25-F is denied. Workman is not entitled for compensation neither he is entitled for absorption as permanent labour. As workman was never engaged, there was no question of obtaining his signature in the record. On all such contentions, 2nd party prays for rejection of claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Kaluram Malviya w.e.f. 26-3-99 is justified? In Negative
- (ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Workman in his affidavit of evidence says that he was continuously working with 2nd party from 87 to 99. He had completed more than 240 days continuous service during each of the year. He was working under DE Telecom Shajapur presently known as BSNL. 2nd party has not followed Section 25 G,H of ID Act. Juniors are retained in service. In his cross-examination, Ist party workman says the post on which he was working was not advertised. He claims ignorance whether the notice was displayed on notice board. He was not interviewed. His name was not called from Employment Exchange. Written test was not conducted. Appointment letter was not issued to him. He denies that he was not working in Telecom Department.

6. Management's witness Deewakar filed affidavit of his evidence. Management's witness says as per record available in office of TDM, Shajapur, workman was never engaged. The claim of workman for regularization is baseless. In his cross-examination, management's witness says during 1990 to 1998, whether casual labours were engaged at Shajapur, he has no information. He was unable to tell names of working at Shajapur from 1990 to 98. Again workman filed affidavit of his evidence. Workman says that management framed scheme for giving temporary status of casual employees engaged after 30-3-85 to 22-6-88. That he had worked in department from Feb 88 to 99 under SDO(II) , Shajapur. He worked more than 240 days during each of the year, he was not granted temporary status, his service were terminated from Feb 99. In conciliation proceeding before ALC, Bhopal, management's witness had admitted he worked more than 240 days during Feb88 to 99. In his cross-examination, workman says he had earlier filed affidavit of his evidence. He admits that Umrao Singh and Shivkant Pandey have given evidence before ALC supporting his claim. He denies that he had never worked in the department.

7. Application for production of documents was submitted on behalf of workman on 26-6-03. 2nd party did not produce documents. No reply to the application was filed despite the application was allowed on 22-11-04. Management of 2nd party by not producing the documents disobeyed order. Material documents are suppressed by management. If evidence of workman is considered with the evidence of management's witness, management's witness was not working during relevant period, he even doesnot know about the daily wage labours engaged in the department, the names of Engineers working during the relevant period. On the other hand, evidence of workman is that he was working in the department. In conciliation proceedings before ALC, management's witness has admitted that the workman worked more than 240 days remained unchallenged. It would have been proper on part of workman to produce

the copies of evidence recorded before ALC, Bhopal. The copies of the deposition recorded before ALC are not produced. If evidence is carefully appreciated, I donot find reason to disbelieve the evidence of workman when management's witness has no personal knowledge about his working. The management has failed to produce the material documents despite order was passed. Therefore adverse interference deserves to be drawn against the management. If the documents directed to be produced were produced in the matter, same would have supported workman about claim of working period.

8. From evidence of record, it is established that workman had worked more than 240 days, his services were terminated without notice, no retrenchment compensation was paid to him. Termination of his service is illegal for violation of Section 25-F of ID Act. Accordingly I record my finding in Point No.1 in Negative.

9. **Point No. 1 & 2-**Termination of workman is illegal as per my finding in Point No.1, question remains for consideration whether workman is entitled for reinstatement with backwages. Evidence of workman in cross-examination is post was not advertised, he was not called for interview, appointment letter was not given to him. Thus his engagement was not following the recruitment process. Therefore workman cannot be granted reinstatement with backwages. Considering the period of working, compensation Rs.One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of shri Kaluram Malviya w.e.f. 26-3-99 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2015

का.आ. 2249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाक विभाग, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/03/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/11/2015 को प्राप्त हुआ था।

[सं. एल-40012/72/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd December, 2015

S.O. 2249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/03/05) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Posts, Bhopal and their workman, which was received by the Central Government on 30/11/2015.

[No. L-40012/72/2004-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/3/05**

Shri Himanshu Shekhar Giri,
H.No. 128, Panchsheel Nagar,
T.T. Nagar,
Bhopal (MP) ...Workman

Versus

Post Master General,
MP circle, Dak Bhawan,
Dept. of Posts,
Hoshangabad Road,
Bhopal ...Management

AWARD

Passed on this 6th day of November 2015

1. As per letter dated 24-11-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/72/2004-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Post Master General, Department of post Office, Bhopal in terminating the services of Shri Himanshu Shekhar Giri w.e.f. 10-11-2002 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim a Page 2/1 to 2/3. Case of Ist party workman is that he was appointed by management of 2nd party on 22-6-98 for distribution of postal dak. He was appointed on post of EDDA. He was illegally terminated on 10-11-2002. He honestly worked without any complaints. No chargesheet was issued to him. that Ist party workman was continuously discharging his duties from 22-6-98 to 10-11-02. He had completing more than 240 days continuous service. He is entitled for permanent status

under provisions of ID Act. That he was not issued notice, retrenchment compensation was not paid. Termination of his services is illegal. One Bindu Markode was employed after his termination. 2nd party violated Section 25 H of ID Act as workman was not given opportunity. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/1 to 8/3 opposing claim of workman. 2nd party submits that in department, post of GDS(EDA) is at lowest stage. TRCA is paid to GDS instead of regular pay. For GDS employee recruitment and service conditions are provided as per GDS Service Rules 2001. Earlier the rules were known as GDS Rules 1964. The engager is entitled only for TRCA, he is not entitled for any other right or claim either for regular appointment or regularisation. That workman Himanshu was engaged on behalf of regular GDS. He worked in place of regular GDS on leave. He is not entitled to any relief.

4. 2nd party reiterates that workman was never appointed as regular EDA or casual labour in the department. It is denied that services of workman are illegally terminated on 10-11-02. That the workman was engaged by EDA on his personal responsibility. He was not appointed by department. There was no question of issuing chargesheet or issuing warning to the workman as he was not appointed by department. That the provisions of ID Act are not applicable as workman was never appointed as casual labour, there was no question of his absorption in department. There was no question of terminating services of workman by department. Whenever an EDA proceeds on leave, he is required to engage his substitute at his risk. As original EDA joins service returning from leave, the services of workman were dispensed. On such ground, 2nd party submits that workman is not entitled to any relief.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Post Master General, Department of post Office, Bhopal in terminating the services of Shri Himanshu Shekhar Giri w.e.f. 10-11-2002 is justified? In Negative

(ii) If not, what relief the workman is entitled to? As per final orders.

REASONS

6. The term of reference pertains to legality of termination of services of workman from 10-11-02. Workman is challenging termination of his services. Affidavit of his evidence is filed. In his affidavit of

evidence, workman says he was appointed by management on 22-6-98 for distribution of dak. His services were terminated from 10-11-02. That he was honestly doing his services without any complaints against him. That his services are covered by the postal Gramin Dak Sevak Service rules. That till May 2001, he was continuously in service. In June 2001, he went on leave submitting application. In muster roll for June 2001 the letter "L" is mentioned which denotes leave. He was shown substitute to one Jamuna Prasad in October 2001. That he rendered his services even after Jamuna Prasad joined his services. In November 2001, his name was appearing at bottom of Attendance Register showing that he joined on 8-11-01. Rule 7.2(2) of Gramin Dak Seva Rules stipulates that in case if a GDS proceeds on leave, he shall propose name of his substitute. Rule 5(2) is also quoted by workman. management could not have engaged substitute in place of GDS for period more than 180 days. That he was discharging his duties regularly from July 99 to 2001 more than 180 days period. That he was also shown substitute of the Rasid Ali from February 2002. In his cross-examination, workman says he passed BA honours. He could read write English and Hindi. He admits copies of muster register Exhibit M-1 to M-54 as correct. He did not remember whether appointment letter was issued to him. Jamuna Prasad was EDA Agent. He admits he was engaged in place of Jamuna Prasad. He claims ignorance how his name was received by the department. He claims ignorance when a regular employee proceeds on leave, substitute is engaged in its place. His evidence in cross-examination is contrary to the contents of Para 6 of his affidavit. In documents Exhibit M-1 to M-54, copies of muster register name of workman is found below name of Yuvraj Moe EDA. In cross-examination of workman, it is not challenged that workman was continuously working from 22-6-98 to 10-11-02, that he had completed more than 240 days continuous service.

7. The evidence of management's witness is devoted on point that workman was never appointed as regular EDA or casual labour. Workman was not illegally terminated is by way of denial. Workman has produced copy of postal life insurance at Exhibit W-2 and the documents produced by management, copy of attendance M-1 to M-54 supports that workman was continuously working with 2nd party. his name was shown below name of Yogesh More.

8. Evidence on record is clear that workman was engaged as substitute when regular EDA proceeded on leave. Section 25-F of ID Act does not differentiate workman working regularly or engaged as substitute. If any workman completes continuous service more than one year, is denied under Section 25 B, services of workman cannot be terminated without notice. The evidence of workman is evident that he was continuously working from 1998 to 10-11-02. Workman is entitled to protection of Section 25-F of ID Act.

9. Rule 8 provides-

Engagement of a Sevak who has rendered more than 3 years continuous service from the date of his engagement shall be liable to be terminated any time by a notice in writing given either by the Sevak to the Recruiting Authority or by the Recruiting Authority to the Sevak.

2nd party not complied Rule-8 by issuing one months notice therefore termination of workman is illegal for violation of Section 25-F of ID Act as well as Rule 8 of Dak Sevak Rules. For above reasons, I record my finding in Point No.1 in Negative.

10. **Point No.2-** In view of my finding in Point No.1, termination of workman is legal, question remains for consideration whether workman is entitled for reinstatement with backwages. As per evidence in cross-examination of workman, he was not given appointment letter by the department. As per documents Exhibit M-1 to M-54, name of workman is shown below name of regular EDA. Workman was not interviewed. His name was not sponsored through Employment Exchange. Ist party workman was not appointed following recruitment rules.

11. Learned counsel for workman Shri Rajnish Gupta relies on ratio held in case of

Ajaypal Singh versus Haryana Warehousing Corporation reported in 2015(6) SCC-321. Their Lordship held violation of Section 25-F is unfair labour practice and illegal retrenchment. Their Lordship held although State or its establishment/undertaking can order retrenchment of workman on such ground, but it cannot do so in contravention of Section 25-F as they would render order illegal and may amount to unfair labour practice by employer with object of depriving workman benefits of ID Act. On facts it was held that order of retrenchment in violation of Section 25-F being invalid, relief of reinstatement with full back wages awarded by Labour Court deserves to be restored.

In present case, workman was not given any appointment order. He was engaged as substitute during leave period of the regular EDA. Relief of reinstatement with backwages would not be justified to the workman.

Learned counsel also relied on ratio held in case of Jasmer Singh versus State of Haryana and another reported in 2015(4) SCC-458. Their Lordship considering that the appellant was appointed as daily paid worker on 1-1-1993 and continued to be so until termination of his service on 31-12-93. The respondent employer on the other hand contending that appellant had voluntarily left job in August 1993 and thereafter in October 1993 had got himself engaged in another sub division and again voluntarily quit job in December 1993. In written statement, respondent employer stating that appellant had worked for 231 days

in the sub division. Thus appellant worked for more than 240 days in establishment of respondent preceding the date of his termination. The order of Labour Court held termination order was set-aside, their Lordship upheld order of reinstatement with backwages.

The facts of present case are not comparable as workman was not directly employed by department. He was engaged as substitute during leave period of regular EDS therefore relief of reinstatement would not be appropriate. Considering period of working, compensation Rs. 75,000/- would meet the ends of justice. Accordingly I record my finding in point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management of Post Master General, Department of Post Office, Bhopal in terminating the services of Shri Himanshu Shekhar Giri w.e.f. 10-11-2002 is not proper.
- (2) 2nd party is directed to pay compensation Rs. 75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2015

का.आ. 2250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/130/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/11/2015 को प्राप्त हुआ था।

[सं. एल-40012/182/2002-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd December, 2015

S.O. 2250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/130/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited, Jabalpur and their workman, which was received by the Central Government on 30/11/2015.

[No. L-40012/182/2002-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/130/03

Shri D. K. Mukherjee, Secretary,
National Federation of Telecom Employee,
NFTE, Telecom Factory,
Right Town, Jabalpur

...Workman

Versus

Chief General Manager,
Telecom Factory,
BSNL, Right Town,
Jabalpur

...Management

AWARD

Passed on this 20th day of November 2015

1. As per letter dated 13-18/2/2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/182/2002-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom Factory, Jabalpur in imposing the penalty of compulsory retirement on Shri R.D.Khamparia, Ex-Fitter Grade 2 vide their order No. DIS/IE/2058/10/90 dated 18-10-00 and depriving him from other allowance other than the maintenance allowance for the suspension period from 6-2-91 to 18-10-00 is fair and just? If not, to what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman through Union submitted statement of claim at Page 3/1 to 3/7. Case of Ist party is that the Union is registered under Trade Union Act. Telecom Factory in Wright town is undertaking of Government of India. In 1991, norms of production by the National productivity council were introduced by the management without any discussion. The employees were opposing it. The petition was filed before CAT in the matter for staying implementation of the norms of NPC. The management of 2nd party was annoyed and was in search of the opportunity to implicate the workman. On 4-2-91, the employees working in Tower Section were illegally suspended by the chargemen. The workers started agitations which was continued on 5-2-91. Ist party workman was suspended on 6-2-91 alleging false charge of instigating workers appearing in the factory premises. The charge was alleged under Rule 31 of standing orders. Shri P.K.Choudhary was appointed as Enquiry Officer. Workman has requested change of Enquiry Officer but his request was not accepted. On 15-3-94, appeal was filed.

On 15-5-96, Goverdhan was appointed as Enquiry Officer, Tapan Chattopadhyay Divisional Engineer and thereafter Shri N.P. Bathunkar appointed as Enquiry Officer. Enquiry was prolonged. Enquiry Officer submitted his report exonerating workman holding that charges are not proved. The Disciplinary Authority disagreed with the findings of Enquiry Officer observing that the statement of management's witness Bharat, Jangli. The charges against workman entering the premises unauthorisely and committed act of indiscipline were held proved. Showcause notice was issued. Workman contends that the statement of management's witnesses are inconsistent and unreliable. It is emphasized that the charges against workman are not proved by the evidence in Enquiry Proceedings. In order to support charges against workman, letter dated 27-9-02 issuing charges obtained from his false. That punishment of compulsory retirement against workman is illegal. The dispute was raised by workman. The evidence was not properly appreciated. Punishment of compulsory retirement was imposed against workman. Enquiry was not properly conducted. The punishment imposed against workman is inductive. 2nd party imposed different punishment. Workman Awadh Choubey was fully censured whereas Shri D.K.Pal and Sharma were imposed different punishments. The punishment of deducting two days wages were imposed against some of the employees for similar misconduct. The punishment imposed against workman is excessive than the charge alleged under Rule 31(C)(RJ) could not be made out. Chargesheet is illegal. On such ground, workman prays for setting aside order of his compulsory retirement and prays for reinstatement with backwages.

3. 2nd party filed Written Statement at Page 5/1 to 5/8 opposing claim of workman. 2nd party submits that workman Shri R.D.Khamparia Ticket No. 2058 was working as Filter Master Grade II. On 4-2-91 and 5-2-91, he was not on duty. He entered in factory premises and given slogans against management and instigated workers for strike. Workman alongwith other workers entered in room of Asstt. Engineer A.N.Gupta unauthorisely. Workman called other officers in said rooms. 2nd party has contended that chargesheet was issued to workman, enquiry was conducted appointing Enquiry Officer. Enquiry Officer submitted his report. Charges were not proved. Disciplinary Authority disagreed with findings of Enquiry Officer after issuing showcause notice, Disciplinary Authority held charges against workman are proved. The punishment of compulsory retirement is proved against workman is legal. It is denied that charges are not supported by present evidence. The reasons for not agreeing with the findings of Enquiry Officer are given. 2nd party reiterates that the punishment of compulsory retirement imposed against workman is proper and legal. It is denied that punishment imposed against workman is excessive. 2nd party prays for rejection of claim.

4. Ist party filed rejoinder at Page 7/1 to 7/6 reiterating contentions in statement of claim.
5. As per order dated 4-3-14, enquiry conducted against workman is found proper and legal.
6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	Not proved
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?"	As per final order

REASONS

7. As per order dated 4-3-14, enquiry conducted against workman is found proper and legal. The point whether charges alleged against workman are proved needs to be decided from the evidence in Enquiry Proceedings. The documents of enquiry are produced. Exhibit W-1 is notice issued by CAT in Original application 121/91. Document Exhibit W-2 is memorandum issued to workman, it includes articles of charges. It is alleged that workman entered in the premises, given slogans and instigated other workers. Exhibit W-3 is reply filed by workman denying charges against him. Workman claimed falsely implicated. Exhibit W-4 is application submitted by workman for change of Enquiry Officer. Exhibit W-5 is order rejecting application for change of Enquiry Officer. Report submitted by Enquiry Officer is produced at Page 3/39 is also admitted. Parties are not in dispute that the Enquiry Officer held charges against workman are not proved. Showcause notice was issued to workman at Page 3/49 giving reasons by Disciplinary Authority not agreeing with the findings of Enquiry Officer. Pointed out the inconsistency could not be basis for discarding entire evidence. The order of punishment is produced at Page 3/61, 3/62. Order passed in appeal is produced at Page 3/65-66. The evidence in enquiry proceedings is produced at Page 3/58 to 3/60. Statement of witness at page 3/59 on the point that the employees entered in the factory premises were giving slogans Muradabad, Zindabad. Management's witness was unable to tell specific name of the workers giving slogans. The statement of management's witness Shri S.C.Khera at page 3/57 is on the point that objecting the suspension of workers, the workers had entered in office in his cabin in tower section. Workman were asking for withdrawal of the suspension of workers. Kranti Prasad, Srivastava and Gurucharan Yadav were present at that time. management's witness Shri D.K.Pal in his statement at Page 3/59 also corroborates evidence of the witnesses

that workers were giving slogans objecting to the suspension. Workers had entered in office of Assstt. Engineer Shri Gupta. Statement of witnesses recorded in Enquiry Proceeding do not show that the workman was amongst the workers giving slogans and he had instigated workers. The evidence in Enquiry Proceedings is absolutely not show what act were committed by workman. The Enquiry Officer had recorded his findings that charges are not proved against workman, it was interfered by Disciplinary Authority without valid reasons. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- In view of my finding in Point No.1, charges alleged against workman are not proved from evidence in Enquiry Proceedings. The punishment of compulsory retirement cannot be sustained. The punishment deserves to be set aside. Accordingly I record my finding in Point No.2.

9. Point No.3- As charges against workman are not proved from evidence in Enquiry Proceedings, the punishment imposed against workman deserves to be quashed and set aside. I may also mention here that learned counsel for 2nd party Shri Himanshu Srivastava donot advance any argument in the point. He remained absent. The punishment imposed against workman deserves to be quashed and set-aside. The affidavit of evidence filed by workman is silent on the point what he was doing after punishment imposed by management. Management has also not adduced evidence about workman was in gainful employment. Considering those aspects, it would be appropriate to reinstate workman with 50 % backwages.

10. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2nd party is directed to reinstate workman with continuity of service with 50 % backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2015

का.आ. 2251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/148/00) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/11/2015 को प्राप्त हुआ था।

[सं. एल-40012/252/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd December, 2015

S.O. 2251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/148/00) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 30/11/2015.

[No. L-40012/252/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/148/00

Shri Balchand,	
S/o Kamal,	
Vill Nohar, Khurd,	
Lalitpur (UP)	...Workman

Versus

Chief General Manager,	
Dept. of Telecommunication,	
Hoshangabad Road, MP Circle,	
Bhopal (MP)	

Telecom District Engineer,	
Shajapur Distt.	...Management

AWARD

Passed on this 26th day of October 2015

1. As per letter dated 29-8-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/252/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager Telecom, Bhopal in terminating Shri Balchand S/o Kamal w.e.f. March 1997 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist party is that he was engaged as labour in establishment of 2ndparty No.4,5 in June 1989. 2nd party No.1,2,3 are Controlling Authorities. 2nd party had introduced scheme for regularization of casual labours working in department in pursuance of judgment by Supreme court in AIR 1987-2342. As per the scheme introduced by 2nd party, the

workman working 30 days prior to March 1985 were entitled for regularization in OA 1476/98 Union versus Government of India, directions were given for regularization of casual workers. The workman claimed regularization of his services. As per the scheme, instead of regularization the workman was orally terminated from March 1997. Any chargesheet was not issued to him, no enquiry was conducted. Termination of Section 25-F of ID Act. Workman contented that he worked more than 240 days in a calendar year. His services are terminated without notice, retrenchment compensation is not paid to him. His request for regularization was not considered. 2nd party management is exploiting him. He was paid wages Rs. 1600 per month less than the minimum wages. Workman prays for his reinstatement and regularization of his service.

3. 2nd party filed Written Statement at Pages 4/1 to 4/2 opposing claim of workman. 2nd party contends that workman never worked with the management. Industrial Dispute does not arise. Workman has not worked since 1989. As workman did not work in the Sub-division, there is no question of regularizing his services. There is no question of violation of Section 25-F of ID Act. when workman did not work in Sub-division, there was no question of continuing junior casual labours. Workman did not work 240 days during any of the year. There was no question of payment of retrenchment compensation or absorption of workman in service.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the management of Chief General Manager Telecom, Bhopal in terminating Shri Balchand S/o Kamal w.e.f. March 1997 is justified? In Affirmative
- (ii) If not, what relief the workman is entitled to?" Workman is not entitled to any relief.

REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Workman has contented that he worked more than 240 days during each of the year during June 89 to March 97. Workman filed affidavit of his evidence but he failed to appear for his cross-examination. His evidence was closed on 21-8-09. As workman failed to appear for cross-examination, his evidence cannot be considered.

6. Management filed affidavit of witness Shri J.K.Jethwani supporting contentions of management that 1st party workman was never engaged in the office of

TDM, Shajapur. Workman is not entitled for regularization. Management's witness was cross-examined by Advocate Shri R.C.Shrivastava. management's witness in his cross examination says post of TDM is in Shajapur. He looks after the administrative work. The management's witness is working on post of SDE legal and looks after the Court matter. Before preparing his affidavit, he had seen Court file of department. He had also seen pleadings in statement of claim and Written Statement.

7. As workman has not appeared for his cross-examination, his evidence cannot be looked into, claim of workman is not supported by any evidence. Workman has failed to establish that he continuously worked more than 240 days during each of the year during 1989 to March 97. Therefore protection of Section 25-F of ID Act is not available to the workman. For above reasons, I record my finding on Point No.2 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager Telecom, Bhopal in terminating Shri Balchand S/o Kamal w.e.f. March 1997 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2015

का.आ. 2252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, शिवपुरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/33/11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/11/2015 को प्राप्त हुआ था।

[सं. एल-40012/108/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd December, 2015

S.O. 2252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/33/11) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited, Shivpuri and their workman, which was received by the Central Government on 30/11/2015.

[No. L-40012/108/2010-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/33/2011

Shri Rajesh Yadav,
S/o Shri Rambharose Yadav,
R/o Vill Thakurpura,
Purana Chhatrawas,
Post Katya Mill,
Shivpuri

...Workman

Versus

District Manager, Telecom,
Bharat Sanchar Nigam Limited,
Telecom Centre,
Shivpuri

...Management

AWARD

Passed on this 27th day of October, 2015

1. As per letter dated 20-4-2011 the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/108/2010-IR(DU). The dispute under reference relates to:

“Whether Shri Rajesh Yadav S/o Shri Rambharose Yadav is a workman within the provisions of Industrial Disputes Act, 1947? Whether his services were terminated by the management of Bharat Sanchar Nigam Limited without following the provisions of law? What relief the applicant concerned is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim on 31-7-12. Case of Ist party workman is that he was engaged on daily wages by 2nd party No.2 as watchman from 12-10-95. He was paid wages at Collector rate. His services record was satisfactory. Workman was also entrusted work of looking after the rest house and office building. He was assigned work of lineman at Telephone Exchange, Sirsoda. Workman was doing work of lineman till his services were orally terminated on 7-8-03. Before termination of his service, notice was not issued to him, he was not paid retrenchment compensation. Termination of his service is in violation of Section 25-F of ID Act. Workman reiterates that he completed 240 days continuous service. He is covered as employee under section 25 B of ID Act. He was not regularized in service. He was orally terminated violating Section 25 N of ID Act. After termination of his service as lineman, 2nd party has engaged Baluram Rajak, Tiwari, workman was not provided employment. No chargesheet was issued to him or any kind of enquiry was not conducted against him. Termination of his service is illegal. Workman prays for reinstatement with backwages.

3. 2nd party filed written Statement opposing claim of the workman. 2nd party reiterates that Ist party was not appointed as watchman. Since 1985, post of watchman is not vacant in its establishment. Workman was not appointed by management of 2nd party. There was no question of his transfer. Appointment letter was not issued to workman. Therefore there was no question of termination of his services. Protection of Section 25-F is not applicable to the workman. Ist party is not covered as employee under Section 25 B of ID Act. All adverse contentions of workman are denied. The contentions of workman that his services were orally terminated are denied. Ist party never worked in office of 2nd party. As workman did not work in establishment of 2nd party, the question of his employment or non-employment is irrelevant. Workman is not entitled for reinstatement.

4. Workman submitted rejoinder on 5-5-2013 reiterating his contentions in statement of claim. Workman submits that SDO(T) Shivpuri orally terminated his service from 8-8-03. Retrenchment compensation was not paid to him. Workman was not given any opportunity of hearing. Government of India issued circular in 1993 for regularization of daily wage employees. 2nd party overlooking said circular not granted temporary status. His services are not regularized even after completing 240 days service in a year.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Shri Rajesh Yadav S/o Shri Rambharose Yadav is a workman within the provisions of Industrial Disputes Act, 1947, Whether his services were terminated by the management of Bharat Sanchar Nigam Limited without following the provisions of law?

Shri Rajesh Yadav is workman under ID Act. It is not proved that his services are terminated violating the law.

(ii) If not, what relief the workman is entitled to?”

Workman is not entitled to any relief.

REASONS

6. The term of reference pertains to legality of the termination of service of workman. The reference also includes whether Ist party is covered as workman under Section 2(s) of ID Act.

7. Workman filed affidavit of his evidence supporting his contentions that he was engaged as watchman on daily wages from 12-10-1995. He was paid wages at

Collector rate. He was assigned work of lineman. He was also looking after the building and rest house. He was working as lineman at Telephone Exchange. His services were orally terminated from 7-8-03 without issuing notice. No retrenchment compensation was paid to him. His services were terminated in violation of Section 25-F of ID Act. As he completed more than 240 days continuous service during each of the year, he is covered as workman under section 25 B of ID Act, no enquiry was conducted against him. After his termination, Baluram Rajak and Manoj Tiwari were engaged. He was working with 2nd party for 8 years with intermittent breaks. From evidence of workman, documents Exhibit W-1 to W-16 are admitted. Workman in his cross-examination, says appointment letter was not issued to him. Interview call was not given to him. He has passed 10th standard in 2013. In 2003, he passed 8th standard. He had not received any training about running telephone machines or running the generator. Witness explained that for work of meter reading, training is not required.

8. In his further cross, workman says in upper portion of Exhibit W-7, W-8 are forged. Workman denies that Exhibit W-9 is not slip of the department. Workman admits that whatever departmental work is carried, letter head is used with name of the officer. In Exhibit W-13, name of BSNL is not appearing, signature of officer is not appearing. Workman denies that said document is forged by him and produced. He denies that on Exhibit W-13, name of department is not appearing. He denies that he had not worked for more than 240 days during any of the year.

9. Management filed affidavit of evidence of Kailash Narayan Bajpai. Management's witness says that workman was never appointed by the department. Appointment letter was not issued to him. Workman did not work on daily wages. Any post is not lying vacant. Workman has not completed 240 days continuous working. In his cross-examination, management's witness says since past 2 years, he is posted at Shivpuri and he has information as per office record. He has no personal knowledge about working of the Ist party. He has no information about the employees working in the past.

10. Workman claims that he was engaged on daily wages as watchman and work of lineman was assigned to him whereas management is denying workman was engaged on daily wages. Appointment letter was not issued to workman. Under Section 2(s) of ID Act, workman is defined as under:-

“” Workman means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding

under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-....

The evidence on record shows that workman was engaged as watchman/ lineman. He was not engaged in supervisory capacity. The evidence proves that workman is covered under Section 2(s) of ID Act. Workman had not received appointment letter, he was not called for interview. In 2003, he passed only 8th standard, in 2014 he passed 10th standard as per his evidence in cross-examination. The documentary evidence produced by workman Exhibit W-1 workman was directed to work at Magroli exchange as per oral directions of Sub Divisional Officer, Shivpuri. The parties are in dispute whether workman had completed 240 days, Exhibit W-1 is not disclosing working days. Document Exhibit W-7,8 produced by workman w.r.t. his attendance are not bearing office seal or signature of the officer concerned. On top of those documents, name of BSNL is not appearing. Exhibit W-7/1 to 6 shows names of different villages in vertical line and name of workman in horizontal line at bottom, who has maintained said attendance register is not disclosed from the documents. In Exhibit W-8, name of Ist party is appearing at Sl.No.3. document appears to be the attendance sheet- the name of BSNL is not appearing. Signature of any officer is not appearing on it. The evidence in cross-examination of workman is clear on above point. Document Exhibit W-9/1 to 5 are bills of purchase of machine oil on different dates. The name of workman is written on reverse side. It cannot be said evidence of attendance of workman. Exhibit W-11 pertains to the details of work, who has maintained said record is not understood as document does not bears seal or signature of any Officer. Exhibit W-13 donot bear seal signature of officer, who has maintained said document is not disclosed. Similarly name, seal and signature of Officer is not appearing on Exhibit W-14 & 15. 2nd party has suggested that those documents are forged and produced by workman. When documents are not bearing seal and signature of concerned officer, name of department is not appearing on it. Those documents are not free from suspicion. The documents discussed above cannot establish that workman continuously worked more than 240 days during each of the year.

11. At the time of argument, learned counsel for workman Shri R.K. Soni produced copy of circular of the year 1998-99 pertaining to payment of bonus and casual labours engaged are entitled to temporary status from 1-8-98. When evidence of workman about completing more than 240 days continuous service is not cogent and reliable, the documents produced are suspicious. The circular brought to my notice does not advance claim of workman.

12. Learned counsel for 2nd party Shri R.S.Khare relies on ratio held in case of

Ajaypal Singh Vrs. Haryana Warehousing Corporation reported in 2015(2) SCC (L&S) 279. Their Lordship dealing with non-compliance of Section 25-F and on facts order of retrenchment in violation of Section 25-F,B is invalid, reinstatement with full backwages awarded by Labour Court deserves to be restored.

Ratio in above case cannot be applied to present case as evidence adduced by workman does not prove that he completed 240 days continuous service. He violation of Section 25-F of ID Act is not established. For same reasons, ratio held in case of Batala Coop Sugar

Mills Ltd. Vrs. Sowaran Singh reported in 2005(8) SCC-481 cannot be beneficially applied to case at hand. Workman has not discharged onus to prove that he completed 240 days service during any of the year. Workman is not entitled to protection of Section 25-F of ID Act. The ratio held in 2013-2-SCC(L&S) 369 & 2006-4-SCC-1 relied by Shri Khare needs to detailed discussion. For reasons discussed above, I record my finding in Point No.1 that Ist party is covered as workman but his services are not terminated violating Section 25-F of ID Act.

13. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer